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INTERSTATE COMMERCE COMMISSION February 5, 1981

No. 1-0384050

FEB 5 1981

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D. C.

Agatha L. Mergenovich, Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

Dear Madam:

Enclosed for recordation under the provisions of 49 U.S.C. § 11303 are the original and counterparts of an Indenture of Trust, Security Agreement and Chattel Mortgage, dated as of February 5, 1981 ("Indenture").

A general description of the railroad rolling stock covered by the Indenture is set forth in Schedule I - Description of Units attached to this letter and made a part hereof.

The names and addresses of the parties to the Security Agreement are

Lender: Bankers Trust Company, as Loan Trustee  
P.O. Box 318  
Church Street Station  
New York, New York 10015

Debtor: United States Trust Company of New York,  
as Trustee under an Amended Trust Agreement  
dated as June 15, 1980, as amended and  
restated by an Amended and Restated  
Trust Agreement dated as of February 2, 1981  
45 Wall Street  
New York, New York 10005

The undersigned is an executive officer of the Debtor which is a party to the enclosed document and has knowledge of the matters set forth therein.

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Agatha L. Mergenovich

-2-

February 5, 1980

Please return the original copy and two counterparts of the Indenture to Charles T. Kappler, Esq., Alvord and Alvord, 918 Sixteenth Street, N.W., Washington, D.C. 20006.

Also enclosed is a check in the amount of \$50.00 covering the required recording fee.

Very truly yours,

UNITED STATES TRUST COMPANY  
OF NEW YORK, as trustee

By Thomas B. Shegosh  
Title Asst. Vice Pres.

Schedule 1

**DESCRIPTION OF UNITS**

**100-Ton 4,750 and 4,700 Cubic Foot Capacity Covered Hoppers:**

**(1) Manufacturer: Portec, Inc.**

**Number of Cars: 406**

**Identifying Marks: XTRX 76577-XTRX 76592, inclusive;  
MILW 101700-MILW 101799, inclusive (which covered hopper cars  
bearing identification marks MILW 101700-MILW 101799, inclusive,  
formerly bore identification marks XTRX 76593-XTRX 76692, inclusive);  
XTRX 76693-XTRX 76757 inclusive; XTRX 76759-XTRX 76927, inclusive;  
XTRX 76928-XTRX 76982, inclusive; and WVRC 9200 (which covered  
hopper car bearing identification mark WVRC 9200 formerly bore  
identification mark XTRX 76758).**

**(2) Manufacturer: Richmond Tank Car Company**

**Number of Cars: 520**

**Identifying Marks: XTRX 75958-XTRX 76082, inclusive;  
XTRX 76188-XTRX 76347, inclusive; MILW 101800-MILW  
101899, inclusive; and XTRX 76348-XTRX 76482,  
inclusive.**

**(3) Manufacturer: FMC Corporation, Marine and Rail Equipment Division**

**Number of Cars: 90**

**Identifying Marks: XTRX 76983-XTRX 76999, inclusive; and  
XTRX 77010-XTRX 77082, inclusive.**

RECORDATION NO. 12867 Filed 1426

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INTERSTATE COMMERCE COMMISSION

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**INDENTURE OF TRUST,  
SECURITY AGREEMENT  
AND  
CHATTEL MORTGAGE**

**Dated as of February 2, 1981**

**between**

**UNITED STATES TRUST COMPANY OF NEW YORK,  
as Owner Trustee**

**and**

**BANKERS TRUST COMPANY,  
as Loan Trustee**

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**INDENTURE OF TRUST, SECURITY AGREEMENT  
AND CHATTEL MORTGAGE**

THIS INDENTURE OF TRUST, SECURITY AGREEMENT AND CHATTEL MORTGAGE (herein, as originally executed and delivered, and as it may from time to time be amended, supplemented or modified, in accordance with its terms, called "this Indenture"), dated as of February 2, 1981, between UNITED STATES TRUST COMPANY OF NEW YORK, a New York corporation having its principal office and chief place of business at 45 Wall Street, New York, New York 10005, as the Trustee under the Trust Agreement, as defined in Article I hereof, and, to the extent so specified herein, in its individual corporate capacity (herein, together with any successors thereto in such trustee capacity, called the "Owner Trustee"), and BANKERS TRUST COMPANY, a New York banking corporation having its corporate trust office at One Bankers Trust Plaza, New York, New York 10006 (herein, together with its successors and assigns permitted hereunder, called the "Loan Trustee"),

**W I T N E S S E T H:**

WHEREAS, the Owner Trustee desires by this Indenture, among other things, to provide for the issuance to the Lenders of the Notes and to Grant the Trust Indenture Estate as security for the Notes; and

WHEREAS, all actions and conditions necessary to make this Indenture a legal, valid and binding contract of the parties, enforceable in accordance with its terms, have in all respects been duly taken and fulfilled, and all actions and conditions necessary to make the Notes, when duly executed by the Owner Trustee, duly authenticated by the Loan Trustee and delivered in accordance with this Indenture, the legal, valid and binding obligations of the Owner Trustee, enforceable in accordance with the terms thereof and hereof, have in all respects been duly taken and fulfilled;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS THAT, in order to secure the due and punctual payment of the principal of and interest on the Notes from time to time outstanding hereunder, in accordance with their terms and the terms hereof, and the due and punctual performance and observance by the Owner Trustee of all the agreements, covenants and provisions herein and in the Notes contained, for the benefit of the holders from time to time of the Notes and for the uses and purposes and upon and subject to the terms and conditions hereof, and in consideration of the premises, the covenants herein contained, the purchase and acceptance of the Notes by the Lenders, the acceptance by the Loan Trustee of the trusts hereby created and the sum of Ten Dollars (\$10.00), in lawful money of the United States of America, duly paid to the Owner Trustee by the Loan Trustee on or before the date of original execution and delivery hereof, and for other good and valuable consideration, the receipt whereof is hereby acknowledged:

### Granting Clauses

The Owner Trustee, by executing and delivering this Indenture, and for the benefit and security of the holders from time to time of the Notes, in accordance with the terms of the Notes and of this Indenture, has specifically Granted and by these presents does hereby specifically Grant unto the Loan Trustee, and its successors in the trusts hereby created and its assigns forever, all the right, title and interest, and all the powers and privileges, of the Owner Trustee in, to and under the following property, whether tangible or intangible, wherever located or situated, whether now owned or held or hereafter acquired (herein called collectively the "Trust Indenture Estate"):

*First*, the Units, the Purchase Orders (subject to the right of the Owner Trustee to purchase each Unit and to be named as the buyer of each Unit in any Bill of Sale delivered pursuant thereto), the Purchase Order Assignments and the Bills of Sale (such Units, Purchase Orders, Purchase Order Assignments and Bills of Sale being herein sometimes called collectively the "Leased Property"); and

*Second*, the Lease, including, without limitation, the immediate and continuing right to receive and collect all rents, income and revenues, now or hereafter payable or receivable under the Lease or pursuant to any of the provisions thereof (other than Excluded Amounts), all rents, income and revenues, now or hereafter payable or receivable under each and every sublease of a Unit or Units, whether now existing or hereafter entered into, to which the Lessee is or may become a party as sublessor, and all insurance proceeds, awards, monies, proceeds and security now or hereafter payable or receivable under the Lease or pursuant to any of the provisions thereof (other than Excluded Amounts), whether payable as rents, the purchase price for any property or otherwise, and whether payable prior or subsequent to the maturity date of the Notes, and the power to execute and deliver, as duly and irrevocably appointed and empowered agent and attorney-in-fact of the Owner Trustee, any appropriate instruments necessary for the transfer of any of the Leased Property upon a purchase pursuant to the Lease and to perform all other necessary or appropriate acts as said agent and attorney-in-fact with respect to such purchase, and the power to transfer portions of the Leased Property subject to the Lease, to give and make all waivers and agreements, to give and make all notices, consents and assignments, to take such action upon the occurrence of an "Event of Default" under and as defined in the Lease (any such Event of Default under the Lease being herein called a "Lease Default"), including, without limitation, declaring the Lease to be in default and commencing, conducting and consummating any proceedings at law or in equity as shall be permitted under any provision of the Lease or by law, and to do any and all other things whatsoever which the Owner Trustee is or may become entitled to do under or in respect of the Lease; and

*Third*, the Guaranty, and any and all payments thereunder or in respect thereof to which the Owner Trustee is or may become entitled (other than Excluded Amounts); and

*Fourth*, any and all property, tangible or intangible, that may from time to time hereafter by delivery or by writing of any kind for the purposes hereof be in anywise subjected to the lien of this Indenture, or be expressly Granted as additional security for the Notes by the Owner Trustee, or by anyone on the behalf or with the consent of the Owner Trustee, to the Loan Trustee, which is hereby authorized to receive the same at any and all times as and for additional security. Any such Grant by the Owner Trustee, or by anyone on the behalf or with the consent of the Owner Trustee, of any property as and for additional security may be subject to any reservations, limitations, conditions and provisions (which shall be set forth in an instrument or agreement in writing executed and delivered by the Owner Trustee or such other person Granting the same, as the case may be, and by the Loan Trustee) respecting the use, management and disposition of the property so Granted, or the proceeds thereof; and

*Fifth*, any and all proceeds of the conversion, voluntary or involuntary, of all or any portion of the property now or from time to time hereafter subject or required or intended to be subject to the lien of this Indenture into cash, negotiable instruments or other instruments for the payment of money, chattel paper, security agreements, documents, liquidated claims or any form of proceeds (including proceeds of insurance and of any governmental takings).

**SUBJECT, HOWEVER, AND SUBORDINATE** to the interests and rights of the Lessee under the Lease.

Subject to the provisions of clause "*Fourth*" of the Granting Clauses hereof, the lien of this Indenture and the Liens permitted under the provisions (other than clause (ii)) of Section 6 of the Lease are the only Liens permitted by this Indenture to exist on or in respect of the Trust Indenture Estate.

#### **Habendum Clause**

**TO HAVE AND TO HOLD** all and singular the Trust Indenture Estate, whether now owned or held or hereafter acquired, unto the Loan Trustee, its successors and assigns forever;

**IN TRUST, NEVERTHELESS**, for the equal and proportionate benefit and security of the holders from time to time of the Notes, without preference, priority or distinction as to the lien of this Indenture or otherwise, of one Note over any other Note, by reason of priority in the issuance thereof or otherwise, and for the enforcement and payment of the Notes, in accordance with their respective terms and the terms hereof, and of all other sums payable thereunder and hereunder, and for the performance of and compliance with all other obligations, covenants and conditions in this Indenture contained;

#### **Defeasance Clause**

**UPON THE CONDITION THAT**, if the Owner Trustee shall pay or cause to be paid to the persons entitled thereto (or shall provide, as permitted by the express terms of Article

XI hereof, for the payment to such persons of) the principal of and interest on the Notes and all other sums payable by it hereunder, as permitted by the express terms hereof, then this Indenture and the rights hereby Granted shall cease, terminate and be void; otherwise, this Indenture shall be and remain in full force and effect.

#### **Certain Agreements**

Anything herein contained to the contrary notwithstanding, the Owner Trustee shall remain liable under the Lease to perform all its obligations thereunder, all in accordance with and pursuant to the terms and provisions thereof, and (except for any obligation arising by operation of law in connection with the exercise by the Loan Trustee of any remedy after an Event of Default shall have occurred and the Notes shall have been declared due and payable) the Loan Trustee shall have no liability under the Lease by reason of or arising out of the foregoing Grants, nor shall the Loan Trustee be required or obligated in any manner to perform or fulfill any obligations of the Owner Trustee under or pursuant to the Lease, or, in connection with the Lease, the Guaranty, the Purchase Orders, the Purchase Order Assignments or the Bills of Sale, to make any payment (except as provided in Articles V and VI hereof), to make any inquiry as to the nature or sufficiency of any payment received by it, to present or file any claim or to take any action to collect or enforce the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

The Owner Trustee (subject to the provisions of Section 8.04 hereof) hereby constitutes and appoints the Loan Trustee its true and lawful agent and attorney-in-fact, irrevocably, with full power (in the name of the Owner Trustee or otherwise) to ask, require, demand and receive, and to give acquittance for, any and all monies and claims for monies payable and to become payable to the Owner Trustee from the Lessee or any other persons under or arising out of the Lease, the Guaranty, the Purchase Orders, the Purchase Order Assignments or the Bills of Sale (other than Excluded Amounts), to endorse any checks or other instruments or orders in connection therewith, to give instructions and to file any claims, institute any proceedings, take any action or exercise any right, power or privilege under any of the aforesaid agreements or instruments which the Loan Trustee may deem to be necessary or advisable in the premises, and, if an Event of Default shall have occurred and be continuing and the Notes shall have been declared due and payable, to make any settlements in connection therewith. The powers with which the Loan Trustee is hereby irrevocably vested include, but are not limited to, the powers specifically referred to in Section 8.04 hereof.

The Owner Trustee hereby agrees that if at any time, or from time to time, any property is to be added to the property then constituting the Trust Indenture Estate pursuant to clause "*Fourth*" of the Granting Clauses hereof, it will duly and promptly execute and deliver a Supplemental Indenture in respect thereof.

The Owner Trustee hereby agrees that at any time, and from time to time, upon the written request of the Loan Trustee, it will duly and promptly execute and deliver any and all such further agreements, instruments and other documents as the Loan Trustee may deem desirable to obtain the full benefits of the Grants herein made.

The Owner Trustee hereby represents and warrants that (except to the extent, and in the manner, contemplated by the Interim Participation Agreement) it has not sold, granted, assigned, mortgaged, hypothecated, transferred, pledged or subjected to a security interest, and hereby covenants that it will not, except as expressly contemplated or permitted by this Indenture, (a) sell, grant, assign, mortgage, hypothecate, transfer, pledge or subject to a security interest any of its right, title or interest hereby Granted, to anyone other than the Loan Trustee, (b) enter into any agreement, instrument or other document amending, supplementing or modifying the Trust Agreement for the purpose, or with the effect, of dissolving or terminating the trusts created thereby, or distributing any of the assets that comprise the Trust Estate, or (c) enter into any agreement, instrument or other document amending, supplementing or modifying the Lease, the Guaranty, any Purchase Order, any Purchase Order Assignment or any Bill of Sale, accept any payment from the Lessee, settle, compromise or release any claim arising under the Lease, the Guaranty, the Trust Agreement, any Purchase Order, any Purchase Order Assignment or any Bill of Sale, or submit or consent to the submission of any dispute, difference or other matter arising under or in respect of any thereof to arbitration; *provided, however*, that the foregoing restriction shall not apply to any amendment of the Lease entered into solely for the purpose of changing any of the terms and conditions of the Lease with respect to the Lessee's right of first refusal and renewal rights in respect of the Units at the end of the original term of the Lease.

The Owner Trustee hereby agrees that it will not, except as expressly contemplated or permitted by this Indenture, take any action which might result in an alteration or impairment of any agreement or instrument referred to in the preceding paragraph, or of any interests, rights, powers, privileges or immunities granted, confirmed or created by any such agreement or instrument.

IT IS HEREBY COVENANTED AND AGREED BY AND BETWEEN THE PARTIES HERETO that this Indenture creates a continuing lien equally and ratably securing the payment in full of the principal of and interest on the Notes from time to time outstanding hereunder, and of all other sums payable thereunder and hereunder, and that the Trust Indenture Estate is to be held, dealt with and disposed of by the Loan Trustee, and the Notes are to be issued, authenticated and delivered, upon and subject to the terms, covenants, conditions, uses and trusts set forth in this Indenture, and the parties hereto do hereby further covenant and agree as follows:

## ARTICLE I

### Definitions

Section 1.01. *Definitions.* Except as the context shall otherwise require, the following terms shall have the following meanings for all purposes of this Indenture (the definitions to be applicable to both the singular and the plural forms of the terms defined):

The term "*Additional Bills of Sale*" shall mean the Bills of Sale executed and delivered to the Owner Trustee by the related Manufacturer or Manufacturers on each

Closing Date formally transferring to the Owner Trustee title to the Units being paid for on such Closing Date, substantially in the form of Exhibit M to the Participation Agreement, and as the same may from time to time be amended, supplemented or modified, in accordance with their respective terms, the terms of the Participation Agreement and the terms of this Indenture.

The term "*Affiliate*" with respect to any person shall mean a person which directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. The term "control" shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of capital stock, by contract or otherwise.

The term "*Aggregate Debt Limit*" shall mean \$30,000,000.

The term "*Basic Rent*" shall have the meaning specified in the Lease.

The term "*Bills of Sale*" shall mean the Initial Bills of Sale and the Additional Bills of Sale.

The term "*Business day*" shall mean any day other than (a) a Saturday or Sunday, (b) a day on which banking institutions in the city in which the Principal Corporate Trust Office of the Loan Trustee is located shall be permitted or required by law or executive order to be closed, and (c) a day on which banking institutions in the State of New York shall be permitted or required by law or executive order to be closed.

The term "*Closing Date*" shall have the meaning specified in the Participation Agreement.

The term "*Event of Default*" shall have the meaning specified in Section 12.01 hereof.

The term "*Event of Loss*" shall have the meaning specified in the Lease.

The term "*Excluded Amounts*" shall mean and include (a) all payments under the Indemnity Agreement, (b) all payments of any indemnity pursuant to Sections 7 and 12 of the Lease (including interest thereon, if any, as provided in the Lease) which by the terms of the Lease are payable to the Owner Trustee (in its individual capacity) or the Owner, as the case may be, for its own account, (c) all rights of the Owner Trustee (in its individual capacity) under the Lease to demand, collect, sue for or otherwise obtain all amounts from the Lessee due the Owner Trustee (in its individual capacity) or the Owner, as the case may be, on account of any such indemnities or payments and all payments of Supplemental Rent to the extent such payments constitute such Supplemental Rent on account of any such indemnities or payments under the Lease, (d) all payments under the Guaranty with respect to the obligations of the Lessee referred to in clauses (b) and (c) above, and (e) all insurance proceeds payable under general public liability policies maintained by the Lessee pursuant to Section 11 of the Lease which by the terms of the Lease are payable to the Owner Trustee (in its individual capacity) or the Owner, as the case may be, for its own account.

The term "*Federal Bankruptcy Code*" shall mean the Federal Bankruptcy Code, 11 U.S.C. § 101 *et seq.*

The term "*Grant*" with respect to any property or right shall mean mortgage, hypothecate, pledge and assign, and create a security interest in, the same; and the term "*Granted*" with respect thereto shall mean mortgaged, hypothecated, pledged and assigned, and created a security interest in, the same.

The term "*Guarantor*" shall mean XTRA Corporation, a Delaware corporation, as guarantor under the Guaranty, together with its successors and assigns permitted under the Guaranty.

The term "*Guaranty*" shall mean the Amended Guarantee Agreement, dated as of July 1, 1980, between the Guarantor and the Owner Trustee, as originally executed and delivered pursuant to the Interim Participation Agreement, and as the same may have been amended, supplemented or modified, in accordance with its terms prior to the original execution and delivery of this Indenture, and as amended, supplemented and restated as contemplated by the Participation Agreement, and as the same may from time to time be further amended, supplemented or modified, in accordance with its terms, the terms of the Participation Agreement and the terms of this Indenture.

The terms "*hereof*", "*herein*", "*hereunder*" and other words of similar import shall be construed to refer to this Indenture as a whole, and not to any particular Article, Section, Subsection or other subdivision.

The term "*holder*" shall mean (a) with respect to any Registered Note, the person in whose name such Note shall be registered in the Note Register, and (b) with respect to any Order Note, the named payee thereof, or any person to whom such Order Note shall have been duly endorsed and delivered and whose name and address shall appear in the record of Order Notes contained in the Note Register.

The term "*indebtedness*" with respect to any person shall mean all items (other than capital stock and surplus) which, in accordance with generally accepted accounting principles, would be shown on the liability side of a balance sheet of such person as of the date on which indebtedness is to be determined. The term "*indebtedness*" shall also include, whether or not so reflected, (a) debt, obligations and liabilities secured by any Lien existing on property owned by such person if such property shall be subject to such Lien, whether or not the debt, obligations or liabilities secured thereby shall have been assumed; (b) obligations of such person under any lease which is required under generally accepted accounting principles prevailing on the date of determination to be shown on the liability side of a balance sheet of such person or which, whether or not required to be so shown, contains terms that require the payment of lease rentals whether or not the property leased thereunder shall exist or can be used for the purpose for which it shall have been leased, or provide for a termination payment calculated to be sufficient to retire any debt, obligations or liabilities secured by a Lien on such lease or on the property leased thereunder; (c) all obligations of such person guaranteeing or in effect guaranteeing any indebtedness, dividend or other obligation of any other person; and (d) all obligations of such person to purchase any materials, supplies or other property, or to obtain the services of any other person, if the relevant contract or other related document requires that payment for such

materials, supplies or other property, or for such services, shall be made regardless of whether or not delivery of such materials, supplies or other property is ever made or tendered or such services are ever performed or tendered.

The term "*Indemnity Agreement*" shall mean the Amended Indemnity Agreement, dated as of July 1, 1980, among the Lessee, the Guarantor and the Owner, as originally executed and delivered pursuant to the Interim Participation Agreement, and as the same may have been amended, supplemented or modified, in accordance with its terms prior to the original execution and delivery of this Indenture, and as amended, supplemented and restated as contemplated by the Participation Agreement, and as the same may from time to time be further amended, supplemented or modified, in accordance with its terms, the terms of the Participation Agreement and the terms of this Indenture.

The term "*Initial Bills of Sale*" shall mean the Bills of Sale executed and delivered to the Owner Trustee by the related Manufacturer or Manufacturers on each delivery date that occurred prior to the original execution and delivery of this Indenture, formally transferring to the Owner Trustee title to the Units being paid for on any such delivery date, as originally executed and delivered pursuant to the Interim Participation Agreement, and as the same may from time to time be amended, supplemented or modified, in accordance with their respective terms, the terms of the Participation Agreement and the terms of this Indenture.

The term "*Interim Lender*" shall have the meaning specified in the Participation Agreement.

The term "*Interim Participation Agreement*" shall mean the Amended Interim Participation Agreement, dated as of July 1, 1980, among the Lessee, the Owner, the Interim Lender and the Owner Trustee, as the same may have been amended, supplemented or modified, in accordance with its terms prior to the original execution and delivery of this Indenture.

The term "*Investment Securities*" shall mean (a) full faith and credit obligations of the United States Government maturing within three months of issue, (b) commercial paper rated "Prime-1" by Moody's Investors Service, Inc. or "A-1" by Standard & Poor's Corporation (or comparably rated by either such organization or any successor thereto if the rating system of such organization shall have been changed or there shall have been such a successor) and having a final maturity of not more than nine months from the date of original issuance thereof, and (c) time deposits in any bank or trust company organized under the laws of the United States of America, any state thereof or the District of Columbia (*provided, however, that such bank or trust company shall be a member of the Federal Reserve System and have a combined capital, surplus and undivided profits in excess of \$100,000,000*).

The term "*knowledge*", as applied to the Owner Trustee or the Loan Trustee, as the case may be, with respect to any event or condition, shall mean actual knowledge of such event or condition by any officer in the corporate trust department of the Owner Trustee or the Loan Trustee, as the case may be.



The term "*Lease*" shall mean the Equipment Lease Agreement, dated as of July 1, 1980, between the Owner Trustee and the Lessee, as originally executed and delivered pursuant to the Interim Participation Agreement, and as the same may have been amended, supplemented or modified, in accordance with its terms prior to the original execution and delivery of this Indenture, and as amended, supplemented and restated as contemplated by the Participation Agreement, and as the same may from time to time be further amended, supplemented or modified, in accordance with its terms, the terms of the Participation Agreement and the terms of this Indenture.

The term "*Lease Default*" shall have the meaning specified in the Granting Clauses hereof.

The term "*Lease Rent*" shall have the meaning specified in Section 5.01 hereof.

The term "*Leased Property*" shall have the meaning specified in the Granting Clauses hereof.

The term "*Lenders*" shall have the meaning specified in the Participation Agreement.

The term "*Lessee*" shall mean XTRA Leasing, Inc., a Delaware corporation, as lessee under the Lease, together with its successors and assigns permitted under the Lease.

The term "*Lien*" shall mean any interest in property securing an obligation owed to, or a claim by, any person other than the owner of the property, whether such interest shall be based on the common law, statute, contract or conveyance, and including the lien or security interest arising from a mortgage, encumbrance, pledge, conditional sale or trust receipt, or from a lease, consignment or bailment for security purposes. Without limitation of the foregoing, the term "*Lien*" shall also include reservations, exceptions, encroachments, easements, rights-of-way, covenants, conditions, restrictions, leases and other title exceptions and encumbrances affecting property. For the purposes of this Indenture, a person shall be deemed to be the owner of any property which it shall have acquired or shall hold subject to a conditional sale agreement or other arrangement pursuant to which title to the property shall have been retained by or vested in some other person for security purposes.

The term "*lien of this Indenture*" and other words of similar import shall mean the lien and security interest created by these presents, including the lien and security interest created by the Granting Clauses hereof on properties hereafter Granted as security for the Notes.

The term "*Loan Trustee*" shall have the meaning specified in the first paragraph of this instrument.

The term "*Majority in Interest of Noteholders*", as of the date of determination, shall mean the holders (other than the Owner, the Owner Trustee or the Lessee, or any Affiliate of any thereof) of at least 51% in aggregate unpaid principal amount outstanding of the Notes.

The term "*Manufacturers*" shall mean the respective manufacturers which are parties to the Purchase Orders, together with their respective successors and assigns.

The term "*Note Register*" shall have the meaning specified in Section 4.01 hereof.

The term "*Notes*" shall mean the non-recourse notes of the Owner Trustee substantially in the form of Appendix A hereof, which secured notes are issued under, and have the benefits and security provided by, this Indenture.

The term "*Officer's Certificate*" with respect to any entity shall mean a certificate of such entity signed on its behalf by its President, any Vice President, its Treasurer or any Assistant Treasurer (or, in the case of the Owner Trustee, by any Vice President, Assistant Vice President, Assistant Secretary, Trust Officer, Assistant Trust Officer or other officer in the corporate trust department thereof), in each case thereunto duly authorized.

The term "*opinion of counsel*" shall mean an opinion or opinions in writing, signed by legal counsel, which opinion or opinions are addressed to, and which opinion or opinions and legal counsel are satisfactory to, the person receiving such opinion or opinions.

The term "*Order Notes*" shall mean any Notes payable to the payees thereof or order.

The term "*outstanding*" with respect to Notes shall mean, as of the date of determination, all Notes theretofore authenticated and delivered under this Indenture, except:

(a) Notes theretofore cancelled by the Loan Trustee or delivered to the Loan Trustee for cancellation;

(b) Notes for whose payment or prepayment money in the necessary amount shall theretofore have been deposited with the Loan Trustee in trust for the holders of such Notes; *provided, however*, that, if such Notes are to be prepaid, notice of such prepayment shall have been duly given pursuant to this Indenture or provision therefor satisfactory to the Loan Trustee shall have been made; and

(c) Notes in exchange or replacement for which other Notes shall have been authenticated and delivered under this Indenture;

*provided, however*, that in determining whether the holders of the requisite aggregate unpaid principal amount of Notes outstanding have made or given any request, demand, instruction, authorization, direction, notice, consent or waiver hereunder, Notes held or owned by the Owner Trustee, the Owner or the Lessee, or any Affiliate of any thereof, shall be disregarded and deemed not to be outstanding, except that, in determining whether the Loan Trustee shall be protected in relying upon any such request, demand, instruction, authorization, direction, notice, consent or waiver, only Notes which the Loan Trustee knows to be so held or owned shall be disregarded.

The term "*Owner*" shall mean General Electric Credit Corporation, a New York corporation, together with its successors and assigns permitted under the Trust Agreement and the Participation Agreement.

The term "*Owner Trustee*" shall have the meaning specified in the first paragraph of this instrument.

The term "*Participation Agreement*" shall mean the Participation Agreement, dated as of February 2, 1981, among the Lessee, the Guarantor, the Owner, the Lenders, the Owner Trustee and the Loan Trustee, as originally executed and delivered, and as the same may from time to time be amended, supplemented or modified, in accordance with its terms.

The term "*person*" shall mean and include an individual, a corporation, a partnership, an association, a joint-stock company, a trust, an unincorporated organization or a government or political subdivision thereof.

The term "*Principal Corporate Trust Office*" with respect to the Loan Trustee shall mean the office of the Loan Trustee located at the address set forth in the first paragraph of this instrument, or such other office at which the corporate trust business of the Loan Trustee shall be conducted, written notice of which shall have been given to the Owner Trustee, the Owner, the holders of outstanding Notes and the Lessee.

The term "*Purchase Orders*" shall mean all purchase orders relating to the manufacture of the Units, including without limitation, those purchase orders listed in Annex B hereof, as such purchase orders were originally executed and delivered, and as the same may from time to time be amended, supplemented or modified, in accordance with their respective terms, the terms of the related Purchase Order Assignment, the terms of the Participation Agreement and the terms of this Indenture.

The term "*Purchase Order Assignments*" shall mean the five separate Purchase Order Assignments, dated as of July 1, 1980, between XTRA, Inc., a Maine corporation, and the Owner Trustee, as originally executed and delivered pursuant to the Interim Participation Agreement, and as the same may have been amended, supplemented or modified, in accordance with their respective terms prior to the original execution and delivery of this Indenture, and as amended, supplemented and restated as contemplated by the Participation Agreement, and as the same may from time to time be further amended, supplemented or modified, in accordance with their respective terms, the terms of the Participation Agreement and the terms of this Indenture.

The term "*Purchase Price*" with respect to the Units shall have the meaning specified in the Lease.

The term "*Registered Notes*" shall mean any Notes payable to the payees thereof or registered assigns.

The term "*Stipulated Loss Value*" shall have the meaning specified in the Lease.

The term "*Supplemental Indenture*" shall mean an instrument amending, supplementing or modifying this Indenture as in effect prior to the date of execution and delivery of such instrument.

The term "*Supplemental Rent*" shall have the meaning specified in the Lease.

The term "*this Indenture*" shall have the meaning specified in the first paragraph of this instrument.

The term "*Trust Agreement*" shall mean the Amended Trust Agreement, dated as of June 15, 1980, between the Owner and the Owner Trustee (in its individual capacity), as originally executed and delivered pursuant to the Interim Participation Agreement, and as the same may have been amended, supplemented or modified, in accordance with its terms prior to the original execution and delivery of this Indenture, and as amended, supplemented and restated as contemplated by the Participation Agreement, and as the same may from time to time be further amended, supplemented or modified, in accordance with its terms, the terms of the Participation Agreement and the terms of this Indenture.

The term "*Trust Estate*" shall have the meaning specified in the Trust Agreement.

The term "*Trust Indenture Estate*" shall have the meaning specified in the Granting Clauses hereof.

The term "*Units*" shall mean and include all the standard-gauge covered hopper cars described in Annex A hereof, together with any and all parts, instruments, appurtenances, accessories and other equipment and improvements of whatever nature from time to time incorporated in or installed as part of such equipment.

## ARTICLE II

### Issuance and Terms of Notes

Section 2.01. *Original Issuance of Notes.* Upon the execution and delivery of this Indenture, and from time to time thereafter, Notes may be executed by the Owner Trustee and furnished to the Loan Trustee for authentication as provided in Section 3.01(b) hereof, and shall thereupon be authenticated by the Loan Trustee and delivered upon the written order of the Owner Trustee; *provided, however*, that the aggregate unpaid principal amount of Notes outstanding at any time shall not exceed the lesser of (a) the Aggregate Debt Limit or (b) 65.1% of the Purchase Price of the Units then subject to the lien of this Indenture.

Section 2.02. *Terms of Notes.* The Notes and the Loan Trustee's Certificate of Authentication thereon shall be substantially in the form set forth in Appendix A hereof, with such appropriate variations, omissions and insertions as may be permitted or required by the terms of this Indenture. The Notes may have such letters, numbers and other marks of identification and such legends or endorsements thereon as the Owner Trustee may determine, with the approval of the Loan Trustee, and as are not inconsistent with the terms of this Indenture. The Notes shall:

- (i) be designated "15¾% Secured Notes (Non-Recourse) due February 5, 1996", be executed by the Owner Trustee and be non-recourse as respects the Owner Trustee;
- (ii) be limited in aggregate unpaid principal amount outstanding at any time to an amount that does not result in a violation of the proviso to Section 2.01 hereof;
- (iii) be issuable in the form of Registered Notes and Order Notes only;
- (iv) be dated the date of original issuance thereof, except as otherwise provided in Section 4.03 hereof;

(v) be issuable in denominations of \$100,000 or more;

(vi) have a stated maturity of February 5, 1996;

(vii) each bear interest on the unpaid principal amount thereof from the date thereof to the date on which such principal amount shall become due and payable as in such Note or herein provided, whether at stated maturity or by acceleration, prepayment or otherwise, at the rate of 15 $\frac{3}{4}$ % per annum, and on any overdue principal (including any overdue prepayment of principal) and, to the extent that payment of such interest shall be enforceable under applicable law, on any overdue instalment of interest, at the rate of 16 $\frac{3}{4}$ % per annum (interest in each case being computed on the basis of a 360-day year of twelve 30-day months);

(viii) each be due and payable as to interest only on May 5, 1981 (if the Notes shall have been issued before May 5, 1981);

(ix) each be due and payable as to principal and interest on each February 5, May 5, August 5 and November 5, commencing August 5, 1981, until paid in full, in quarter-annual instalment payments of principal and interest (x) calculated in the manner described in Schedule I of the form of Note set forth in Appendix A hereof, and, in any case, (y) sufficient to retire 100% of the principal amount thereof, through such instalment payments, at the stated maturity; and

(x) not otherwise be prepayable except as expressly provided in Article VI hereof.

### ARTICLE III

#### Execution and Payment of Notes

Section 3.01. *Execution and Authentication of Notes.* (a) The Notes shall be executed on behalf of the Owner Trustee by any authorized officer of the Owner Trustee by manual signature. Any Note may be executed on behalf of the Owner Trustee by any person who, on the actual date of said execution, shall be an authorized officer of the Owner Trustee, although on the date of such Note, or on the date of authentication or delivery thereof by the Loan Trustee, such person shall not have been, or shall have ceased to be, an authorized officer of the Owner Trustee, and, in any such case, such Note may be authenticated and delivered by the Loan Trustee with the same effect as though such person shall have been such authorized officer on the date of such Note and on the date or dates of authentication and delivery thereof by the Loan Trustee.

(b) No Note shall be valid, become obligatory for any purpose, be binding upon the Owner Trustee or be entitled to the benefits and security of this Indenture unless and until it shall have been authenticated by the Loan Trustee by execution of a Certificate of Authentication thereon, in the form specified herein, which Certificate the Loan Trustee is hereby authorized to execute upon the written order of the Owner Trustee and in

accordance with the provisions of this Indenture. The authentication and delivery by the Loan Trustee of a Note shall be conclusive evidence that such Note has been duly issued hereunder and is entitled to the benefits and security of this Indenture.

Section 3.02. *Method of Payment of Notes; Application of Payments.* (a) The principal of and interest on each Note shall be payable at the Principal Corporate Trust Office of the Loan Trustee in immediately available funds. Notwithstanding the foregoing, and without any requirement that Notes be presented or surrendered (except as specified below), the Loan Trustee will, in accordance with instructions from the holder of any Note given by written notice to the Loan Trustee at any time (but not less than five days before the date for any payment hereunder to be affected thereby), make payment of all amounts received by the Loan Trustee and payable to such holder, by (i) transferring the amount to be distributed to such holder by wire in immediately available funds to such bank in the United States as shall have been specified in such notice for credit to the account of such holder maintained at such bank, (ii) making a check in immediately available funds available to such holder at such address as such holder shall have specified in such notice, or (iii) any other method so designated by such holder and reasonably acceptable to the Loan Trustee. The execution and delivery of the Participation Agreement by the Lenders shall be deemed to constitute the written notice by the Lenders referred to above. In the case of any payment or prepayment that would discharge all indebtedness evidenced by a Note, such Note shall be surrendered to the Loan Trustee for cancellation; *provided, however*, that such requirement of surrender to the Loan Trustee for cancellation shall not be a condition to such payment or prepayment. In the case of any partial prepayment of the principal of any Note, such Note may be surrendered to the Loan Trustee and a new Note issued in exchange for the unpaid principal portion thereof in accordance with the provisions of Article V hereof.

To the extent permitted by law, the Owner Trustee and the Loan Trustee may deem and treat the person in whose name any Registered Note shall be registered in the Note Register, or the payee or endorsee of any Order Note whose name and address shall appear in the record of Order Notes contained in the Note Register, as the absolute owner and holder of such Note (whether or not payment in respect of such Note shall be overdue) for the purpose of receiving payment of all amounts payable with respect to such Note, and for all other purposes. All payments to or upon the order of such person shall be valid and effective to satisfy and discharge the indebtedness evidenced by such Note to the extent of the sums so paid.

(b) In the case of each Note, each payment shall be applied as follows: *first*, to the payment of accrued but unpaid interest on such Note then due thereunder (including interest on overdue principal and, to the extent that payment of such interest shall be enforceable under applicable law, interest on overdue interest); and *second*, to the payment of the principal amount of such Note then due thereunder.

Section 3.03. *Payments from Trust Indenture Estate Only.* All payments of principal and interest to be made under the Notes or hereunder to the holders of outstanding Notes shall be made only from the income and proceeds of the Trust Indenture Estate and only to

the extent that the Loan Trustee shall have sufficient income or proceeds from the Trust Indenture Estate to make such payments in accordance with the terms of this Indenture. Each holder of a Note, by its acceptance thereof, agrees that it will look solely to the Trust Indenture Estate, to the extent available for distribution to such holder as herein provided, for payment from time to time of the indebtedness evidenced by such Note, and that neither the Owner nor the Owner Trustee shall be liable in its individual capacity to such holder for any amounts payable in respect of the principal of or the interest on such Note.

## ARTICLE IV

### Transfer and Exchange of Notes

Section 4.01. *Transfer and Exchange of Notes.* The Owner Trustee shall maintain (or cause to be maintained) at the Principal Corporate Trust Office of the Loan Trustee a register (the "Note Register") to provide for the registration and registration of transfer of Registered Notes, the recording of the names and addresses of the payees and endorsees of Order Notes and the exchange of Registered Notes and Order Notes. The Note Register shall be in written form. The names and addresses of the holders of Registered Notes, and transfers of Registered Notes, shall be registered, and the names and addresses of the payees and endorsees of Order Notes shall be recorded, in the Note Register under such reasonable regulations as the Loan Trustee may prescribe. A holder of any Registered Note intending to transfer such Note, and the holder of any Registered Note or Order Note intending to exchange such Note for Notes of different authorized denominations (whether for the purpose of combination or split-up), or for a Note or Notes in the other form (whether Registered Notes or Order Notes), shall surrender such Note to the Loan Trustee at its Principal Corporate Trust Office, together with a written request from such holder for the issuance of one or more new Notes, which written request shall specify the denomination or denominations, and the form, of the same, and, in the case of a surrender of a Registered Note for registration of transfer, the name and address of the transferee thereof. Promptly upon receipt by the Loan Trustee of such Note and written request, the Loan Trustee shall notify the Owner Trustee thereof and the Owner Trustee shall promptly execute and furnish to the Loan Trustee for authentication, and the Loan Trustee shall thereupon authenticate and deliver, new Notes in the then aggregate unpaid principal amount of such surrendered Note, dated as provided in Section 4.03 hereof and in such authorized denomination or denominations and registered in the name of or payable to the order of such person or persons as shall have been specified in such written request. Order Notes shall be transferable by endorsement and delivery. In the case of any transfer of any Order Note, the transferee shall provide written notice of such transfer to the Owner Trustee and the Loan Trustee in form and substance reasonably satisfactory to the Owner Trustee and the Loan Trustee, and each such transferee, by its acceptance of such Order Note, agrees to be bound by this provision.

Section 4.02. *Mutilated, Destroyed, Lost or Stolen Notes.* If any Note shall become mutilated, or shall be destroyed, lost or stolen, the Owner Trustee shall, promptly upon written request by the holder of such Note delivered to the Loan Trustee and the Owner

Trustee, execute and furnish to the Loan Trustee for authentication, and the Loan Trustee shall thereupon authenticate and deliver, in replacement therefor, a new Note in the same form (whether a Registered Note or an Order Note) as the mutilated, destroyed, lost or stolen Note and in the then aggregate unpaid principal amount, registered in the name of or payable to the order of the same holder and dated as provided in Section 4.03 hereof. If the Note to be replaced has become mutilated, such Note shall be surrendered to the Loan Trustee for cancellation as a condition to the issuance of a new Note, as specified above. If the Note to be replaced has been destroyed, lost or stolen, the holder of such Note shall furnish to the Owner Trustee and the Loan Trustee (a) such security and indemnity as may reasonably be required by each of them to save it harmless and (b) evidence satisfactory to the Owner Trustee and the Loan Trustee of the destruction, loss or theft of such Note, and of the ownership thereof (the affidavit and undertaking of any original purchaser of Notes, or of any institutional holder of a Note, being understood and agreed by the parties hereto to constitute adequate and sufficient indemnity and evidence with respect to such person under the foregoing provisions).

Section 4.03. *New Notes Generally; Payment of Expenses on Transfer of Notes.* Each Note (hereinafter in this Section 4.03 called a "New Note") issued pursuant to Section 4.01 or 4.02 hereof in exchange or replacement for, or (in case the same shall be a Registered Note) on registration of transfer of, any outstanding Note (hereinafter in this Section 4.03 called an "Old Note") shall be a valid obligation of the Owner Trustee, evidencing the same indebtedness as the particular Old Note (with appropriate adjustments in the case of exchanges involving combinations or split-ups), shall be entitled to the benefits and security of this Indenture to the same extent as the particular Old Note and, in the case of any New Note issued in replacement for one or more Old Notes, shall constitute an original additional contractual obligation of the Owner Trustee, whether or not said Old Notes shall be at any time enforceable by anyone. Each New Note shall be dated and shall bear interest from the date to which interest on the Old Note has been paid, unless no interest has been paid on such Old Note, in which case, it shall be dated the date of such Old Note and shall bear interest from such date. Notwithstanding the foregoing, New Notes shall in any event be issued in such manner that no gain or loss of interest shall result solely from such issuance. All Old Notes surrendered to the Loan Trustee shall be cancelled by the Loan Trustee promptly upon proper authentication and delivery by the Loan Trustee to the person entitled thereto of the New Note or New Notes issued pursuant to Section 4.01 or 4.02 hereof in exchange or replacement for, or (in case the same shall be Registered Notes) on registration of transfer of, such Old Notes.

Upon the authentication and delivery of New Notes pursuant to Section 4.01 or 4.02 hereof, or upon the transfer of any Order Note pursuant to Section 4.01 hereof, the Loan Trustee may require from the person requesting such New Notes payment of a sum sufficient to reimburse the Owner Trustee and the Loan Trustee for, or to provide funds for, the payment of any tax or other governmental charge in connection with the issuance of such New Notes or in connection with such transfer.

Section 4.04. *Loan Trustee as Agent.* The Owner Trustee hereby appoints the Loan Trustee as its agent for the payment, registration, registration of transfer of Registered



Notes, recording of names and addresses of payees and endorsees of Order Notes and exchange of Notes and for the receipt of all notices or demands to or upon it with respect to the Notes or this Indenture; *provided, however*, that the foregoing appointment shall not constitute any assignment to the Loan Trustee of the discretionary rights, or any delegation to the Loan Trustee of the duties, of the Owner Trustee specified in the Notes or this Indenture. Notes may, except as otherwise provided in Section 3.02 hereof, be presented for payment at, and notices or demands with respect to the Notes or this Indenture may be given or made at, the Principal Corporate Trust Office of the Loan Trustee. The Loan Trustee will, promptly after receipt thereof, notify the Owner Trustee, the Lessee and the holders of the Notes of its receipt of any such notice or demand, but the failure of the Loan Trustee so to notify any person will not invalidate any such notice or demand, relieve the Owner Trustee of any of its obligations hereunder, affect or impair any of the rights of the Loan Trustee or the holders of the Notes hereunder or impose any duty or liability upon the holders of the Notes.

## **ARTICLE V**

### **Receipt, Distribution and Application of Income from the Trust Indenture Estate**

Section 5.01. *Lease Rent.* Except as otherwise provided in Sections 5.02 and 12.06 hereof, each payment of Basic Rent, as well as any payment of Supplemental Rent received by the Loan Trustee (other than Excluded Amounts), under the Lease required by the terms thereof to be made after the date of original execution and delivery of this Indenture (said Basic Rent and Supplemental Rent being herein called collectively "Lease Rent"), including, in each case, any amounts in lieu thereof, shall be applied by the Loan Trustee on the date on which such payment shall be due from the Lessee, or (if not then received by the Loan Trustee) as soon thereafter as such payment shall be received by the Loan Trustee, in the following order of priority:

*First.* So much of such payment as shall be required to reimburse then existing or prior holders of Notes for payments to, or deposits with, the Loan Trustee pursuant to Section 9.03 hereof (to the extent not previously reimbursed) shall be distributed to such then existing or prior holders of Notes; in case the aggregate amount to be distributed under this clause "*First*" shall be insufficient to make the aforesaid reimbursement in full, then such distribution shall be made to each such person as nearly as practicable in the proportion that the aggregate amount of payments or deposits by such person shall bear to all unreimbursed payments and deposits by then existing and prior holders, without priority of any then existing or prior holder of Notes over any other then existing or prior holder of Notes;

*Second.* So much of such payment as shall be required to reimburse or pay the Loan Trustee for any tax, expense, loss or fee (including counsel fees and disbursements) incurred by or due to the Loan Trustee (to the extent not previously reimbursed and to the extent incurred in connection with its duties as Loan Trustee)

and as to which the Loan Trustee is entitled to reimbursement in accordance with the terms hereof or the Lease, shall, for that purpose, be retained by the Loan Trustee;

*Third.* So much of such payment as shall be required for that purpose shall be distributed and paid to the holders of Notes, without priority of one Note over any other Note, to pay in full the aggregate amount of principal and interest (as well as any interest on overdue principal, and, to the extent that payment of such interest shall be enforceable under applicable law and an amount equal thereto shall have been received by the Loan Trustee, overdue interest), then due in respect of the Notes; in case the aggregate amount to be distributed under this clause "*Third*" shall be insufficient to pay in full such principal and interest, then such distribution shall be made to each such holder as nearly as practicable in the proportion that the aggregate unpaid amount of principal and interest then due on Notes outstanding held by such holder shall bear to the aggregate unpaid amount of principal and interest then due on all the Notes outstanding, without priority of any one Note over any other Note; and

*Fourth.* The balance, if any, of such payment remaining thereafter shall be distributed to the Owner Trustee.

Section 5.02. *Certain Other Payments; Mandatory Prepayment of Notes.* (a) Except as otherwise provided in Section 12.06 hereof, any amount received by the Loan Trustee (other than Excluded Amounts), whether received from the Lessee pursuant to the Lease, from the Owner Trustee or otherwise, in connection with an event or circumstance referred to in Section 6.02 hereof shall in each case be distributed and paid forthwith by the Loan Trustee in the following order of priority:

*First.* In the manner provided in clause "*First*" of Section 5.01 hereof;

*Second.* In the manner provided in clause "*Second*" of Section 5.01 hereof;

*Third.* So much of such amount as shall be required to prepay Notes to be prepaid in accordance with Section 6.02 shall be distributed to the holders of the Notes; in case the aggregate amount to be distributed under this clause "*Third*" shall be insufficient to prepay in full, with appropriate accrued interest, the Notes to be prepaid as provided in Section 6.02 hereof, then such distribution shall be made to each such holder as nearly as practicable in the proportion that the aggregate unpaid principal amount of all Notes to be prepaid held by such holder, plus the accrued but unpaid interest thereon to the date fixed for prepayment, shall bear to the aggregate unpaid principal amount of all the Notes to be prepaid, plus the accrued but unpaid interest thereon to the date fixed for prepayment, without priority of one Note over any other Note; and

*Fourth.* In the manner provided in clause "*Fourth*" of Section 5.01 hereof.

(b) Except as otherwise provided in Section 12.06 hereof, any amounts received by the Loan Trustee representing payments of insurance proceeds (other than the proceeds of any public liability insurance) shall be held by the Loan Trustee in a special fund (subject to the lien of this Indenture) and be applied (and thereby be discharged from the lien of this

Indenture) in payment of, or in reimbursement to the Lessee for its payment of, the cost of repairs or replacement of the affected Unit in accordance with the provisions of Section 10 of the Lease, but such payments shall be made only against certificates of the Lessee, signed by the President or a Vice President of the Lessee, delivered to the Loan Trustee from time to time as such repair or replacement shall progress or be completed and evidencing payment by the Lessee of an amount at least equal to the amount of the payments to be made to the Lessee pursuant to this Subsection (b). Pending the expenditure or other disposition of amounts in such special fund, such amounts shall, if the Lessee shall so elect, be invested and reinvested at the written direction of the Lessee in Investment Securities, on the condition that the Lessee shall have theretofore undertaken in writing to pay to the Loan Trustee the amount of any losses resulting from such Investment Securities or such investments in such manner and at such times as shall be acceptable to the Loan Trustee. Such Investment Securities shall mature as nearly as practicable at the time or times when payments shall be expected to be made to or at the direction of the Lessee as provided above, and the Loan Trustee is authorized to sell any Investment Securities purchased in accordance with this Section 5.02 as and when necessary to make such payments. Unless a Lease Default (or any event or condition which, after notice or the passage of time or both, could constitute a Lease Default) of which the Loan Trustee shall have knowledge shall have occurred and be continuing, the balance, if any, remaining after the aforesaid application of funds by the Loan Trustee shall be paid to the Owner Trustee.

Any amount otherwise payable under this Subsection (b) which is not required to be paid to the Lessee solely because a Lease Default (or any event or condition which, after notice or the passage of time or both, could constitute a Lease Default) of which the Loan Trustee shall have knowledge shall have occurred and be continuing shall, unless and until the Lease shall have been declared in default pursuant to the provisions thereof (or the election period in respect of a Lease Default shall have ended), be held by the Loan Trustee and distributed, after every Lease Default (or other such event or condition) shall have been cured, as provided in Section 10 of the Lease, or, upon such declaration of default (or the ending of such election period), be applied as provided in Section 12.06 hereof.

## ARTICLE VI

### Prepayment of Notes

Section 6.01. *Method of Prepayment.* No prepayment of any Notes may be made except to the extent and in the manner expressly permitted or required by the provisions of this Indenture. The Owner Trustee covenants and agrees that all prepayments of Notes (other than the prepayments included in the regular instalment payments to be made with respect to the Notes pursuant to Section 2.02(ix) hereof) will be made to the holders of Notes entitled thereto in accordance with this Article VI.

Section 6.02. *Mandatory Prepayment of Notes in Certain Circumstances.* The Notes shall be subject to prepayment, and shall be prepaid, at a prepayment price equal to the unpaid principal amount of the Notes to be prepaid in accordance therewith (without premium), plus accrued interest on such principal amount to the date fixed for prepayment,

on the following terms: If an Event of Loss under the Lease shall have occurred, Notes shall be prepaid, in whole or in part, in an aggregate principal amount determined by multiplying the aggregate unpaid principal amount of outstanding Notes by a fraction, the numerator of which shall be the Purchase Price of the affected Unit or Units and the denominator of which shall be the Purchase Price of all the Units less the Purchase Price of any Unit or Units in respect of which there shall previously have been a prepayment of Notes in accordance with the provisions of this Section 6.02. Such prepayment of Notes shall be effected on the date on which the Lessee shall be required by the provisions of Section 10 of the Lease to pay Stipulated Loss Value in respect of such Event of Loss.

Section 6.03. *Optional Prepayment of Notes.* The Notes shall not be subject to prepayment at the option of the Owner Trustee.

Section 6.04. *Allocation of Prepayments Among Notes.* If Notes are to be prepaid in part at any time, the Loan Trustee shall prorate the aggregate principal amount of Notes to be prepaid among all holders of Notes then outstanding in proportion (calculated to the nearest \$1) to the respective aggregate unpaid principal amount of Notes held by each holder.

Section 6.05. *Notice of Prepayment.* Not more than seventy-six nor less than fifteen days prior to the date fixed for prepayment of any Notes pursuant to Section 6.02 hereof, the Loan Trustee shall give or cause to be given notice of such prepayment by certified mail, return receipt requested, postage prepaid, to the holder of each Note to be prepaid, at the last address of such holder appearing in the Note Register. Such notice shall specify (a) the date fixed for prepayment, (b) the prepayment price, and (c) whether or not the holder to which such notice is given is required under Section 3.02 of this Indenture to surrender its Note or Notes for prepayment (and, if such surrender shall be necessary, the place for such surrender).

Section 6.06. *Surrender of Notes; Payment.* If notice of prepayment shall have been given as provided in Section 6.05 hereof, the Notes (or specified principal amounts thereof) designated for prepayment shall become due and payable on the date specified in said notice, together with interest accrued on the principal amounts to be prepaid to the date fixed for prepayment. On such date such Notes, or the specified principal amounts thereof, to be prepaid shall be prepaid, together with interest accrued on the principal amounts to be prepaid to the date fixed for prepayment. Interest on the principal amounts of the Notes to be prepaid shall cease to accrue after the date fixed for prepayment unless default shall be made in the payment of such principal amounts, or accrued interest payable in connection therewith.

Upon partial prepayment of any Note, the Owner Trustee will, promptly upon request of the holder of such Note and surrender of such Note to the Loan Trustee, execute and furnish to the Loan Trustee for authentication, and the Loan Trustee will promptly authenticate and deliver, in each case without charge to the holder thereof, in exchange therefor, one or more new Notes in the same form as such Note (whether a Registered Note or an Order Note) and in an aggregate principal amount equal to the principal amount of such Note remaining unpaid. Each new Note so issued shall be registered in the name of or

payable to the order of the person who shall have been the holder of the Note so surrendered, and the same shall be dated as provided in Section 4.03 hereof. The regular instalment payments on each such new Note (and on any Note partially prepaid hereunder without surrender thereof to the Loan Trustee) shall be reduced by an amount equal to (i) the amount of such regular instalment payment on such Note prior to such prepayment multiplied by (ii) a fraction of which the numerator is the principal amount of such Note so prepaid and the denominator is the principal amount of such Note immediately prior to such prepayment. All Notes surrendered for prepayment pursuant to this Article VI shall be cancelled by the Loan Trustee promptly upon such prepayment and/or the proper authentication and delivery by the Loan Trustee to the person entitled thereto of the new Note or Notes issued pursuant to the foregoing provisions of this Section 6.06.

For the purposes of the preceding paragraph, regular instalments of principal and interest due on any date fixed for partial prepayment of Notes pursuant to Section 6.02 hereof, if received when due, shall be deemed paid prior to such partial prepayment.

Section 6.07. *Information to Loan Trustee.* At least seventy days (or such shorter period acceptable to the Loan Trustee) prior to any prepayment of Notes pursuant to Section 6.02 hereof, the Owner Trustee shall furnish, or cause to be furnished, to the Loan Trustee, in writing, all pertinent information required to be included in the notice to be given by the Loan Trustee pursuant to Section 6.05 hereof.

## **ARTICLE VII**

### **Possession, Use of Proceeds and Release of Trust Indenture Estate**

Section 7.01. *Receipt of Lease Rent by Loan Trustee.* The Loan Trustee shall receive and collect directly, without the intervention or assistance of any fiscal agent or other intermediary, all Lease Rent and all other amounts Granted to the Loan Trustee hereunder, and shall disburse the same upon and subject to the terms and conditions of this Indenture.

Section 7.02. *Takings.* The Owner Trustee shall, immediately upon obtaining knowledge of the institution or threatened institution of any proceedings for the taking of any portion of or interest in the Leased Property, notify the Loan Trustee thereof. The Loan Trustee may participate, and, at the request of and upon satisfactory indemnification pursuant to Section 9.03 hereof by a Majority in Interest of Noteholders, the Loan Trustee shall participate, in any such proceedings. The Owner Trustee shall deliver, or cause to be delivered, to the Loan Trustee all instruments requested by the Loan Trustee to permit such participation. In any such proceedings, the Loan Trustee may be represented by counsel satisfactory to the Loan Trustee.

Section 7.03. *Partial Release of Trust Indenture Estate.* As promptly as practicable after written request therefor from the Owner Trustee, the Loan Trustee shall execute and deliver any documents or instruments, in form and substance satisfactory to the Loan Trustee, presented to the Loan Trustee and necessary to release from the lien of this Indenture, any Unit with respect to which an Event of Loss shall have occurred (together

with the related Purchase Order to the extent such Purchase Order relates to such Unit), upon receipt of an amount equal to the Stipulated Loss Value thereof.

Section 7.04. *Termination of Interest in Trust Indenture Estate.* A holder of a Note shall have no further interest in, or other right, power or privilege in respect of, the Trust Indenture Estate when and if the principal of and interest on all Notes then outstanding and held by such holder, and all other sums payable to such holder hereunder and under such Notes, shall have been duly paid in full.

## ARTICLE VIII

### Particular Covenants and Agreements of the Owner Trustee

Section 8.01. *Payment of Principal and Interest.* The Owner Trustee covenants and agrees that it will duly and punctually pay the interest coming due and the principal maturing or otherwise becoming payable, whether at stated maturity or by acceleration, call for prepayment or otherwise, in respect of the Notes on the dates and in the manner provided in, and in accordance with, this Indenture and the Notes, according to the true intent and meaning hereof and thereof. This Section 8.01 is hereby made expressly subject to Sections 3.03 and 9.10 hereof.

Section 8.02. *Corporate Existence.* (a) The Owner Trustee covenants and agrees that it will do, or cause to be done, all things necessary to preserve and keep in full effect its existence, franchises, rights and privileges as a corporation to the extent necessary to preserve the legality, validity and enforceability of the Notes and the full benefits and security of this Indenture for the Notes and for the Loan Trustee and the holders of the Notes.

(b) The Owner Trustee covenants and agrees that (i) the Owner Trustee will continue to be empowered under the laws of the State of New York and the United States of America to exercise such trust powers as may be necessary or appropriate for the purposes of this Indenture, and (ii) so long as any of the Notes shall be outstanding, the Owner Trustee will not dissolve or terminate the trusts created by the Trust Agreement, nor will it distribute any of the assets comprising the Trust Estate except as contemplated hereby.

Section 8.03. *Performance of Covenants; Authority.* The Owner Trustee covenants and agrees that, to the extent not inconsistent with the provisions of this Indenture, it will faithfully perform and observe at all times any and all covenants, undertakings, stipulations and provisions to be performed by it under the Lease, the Guaranty, the Trust Agreement, the Purchase Order Assignments, the Participation Agreement and this Indenture, and under each and every Note executed and delivered hereunder. The Owner Trustee represents and warrants that it is duly authorized to execute and deliver the Notes and this Indenture; that all action on its part for the execution and delivery of the Notes and the original execution and delivery of this Indenture has been duly and effectively taken; and that the Notes and this Indenture are and will be the legal, valid and binding obligations and contracts of the Owner Trustee, enforceable in accordance with their respective terms.

Section 8.04. *Certain Covenants with Respect to Agreements.* Anything in the Trust Agreement to the contrary notwithstanding, the Owner Trustee covenants and agrees that, so long as any of the Notes shall be outstanding:

(a) the Owner Trustee will not, without the prior written consent of the Loan Trustee, enter into any agreement or take or consent to any action subordinating, amending, modifying, supplementing, releasing, terminating or otherwise affecting the Lease, the Guaranty, any Purchase Order, any Purchase Order Assignment or any Bill of Sale, or waiving, excusing, rescinding, avoiding, disaffirming, abating, suspending, deferring, impairing, compromising or settling any obligation thereunder or any liability consequent thereon, whether or not there shall have occurred any Lease Default or default, breach or failure to perform under or in respect of the Lease, the Guaranty, any Purchase Order, any Purchase Order Assignment or any Bill of Sale, and notwithstanding any bankruptcy, insolvency, reorganization, arrangement, readjustment, liquidation, dissolution, winding-up or other proceeding against or affecting the Lessee, the Guarantor, the Owner, the Owner Trustee or any Manufacturer, and notwithstanding any action with respect to the Lease, the Guaranty, any Purchase Order, any Purchase Order Assignment or any Bill of Sale, which may be taken by an assignee, receiver or trustee in bankruptcy (or other similar official) or other party to, or the court, referee, bankruptcy judge or officer or officers in, any such proceeding (any action or attempted action by the Owner Trustee contrary to this Section 8.04, unless and until subsequently approved, ratified and confirmed in writing by the Loan Trustee, being void and of no effect); *provided, however*, that the foregoing restriction shall not apply to any amendment of the Lease entered into solely for the purpose of (i) changing any of the terms and conditions of the Lease with respect to the Lessee's right of first refusal and renewal rights in respect of the Units at the end of the original term of the Lease or (ii) increasing Basic Rent or Stipulated Loss Value payable in respect of the Units;

(b) the Loan Trustee having been irrevocably appointed by the Owner Trustee as its duly constituted agent and attorney-in-fact, the Owner Trustee will not enforce any rights, powers and privileges under or in respect of the Lease, the Guaranty, any Purchase Order, any Purchase Order Assignment or any Bill of Sale, except to the extent of instructions received in writing from the Loan Trustee, and the Loan Trustee is empowered to exercise, during the continuance of any Lease Default, in place of the Owner Trustee, the remedies of the lessor under the Lease (including the power of the lessor to declare the Lease to be in default pursuant to the provisions thereof). Subject to the provisions of the next succeeding sentence, the Loan Trustee, acting directly or through counsel or other authorized representatives, shall have the exclusive power to direct and control all proceedings of any nature involving the Owner Trustee with respect to the Lease, the Guaranty, the Purchase Orders, the Purchase Order Assignments and the Bills of Sale, including, without limitation, the giving or making of any notice, consent, waiver or demand, the institution and conduct of any legal proceedings, the making of any agreements incident to such proceedings (and the settlement or other disposition of any such proceedings) and the taking of any one or

more of the actions with respect to such agreements and instruments; *provided, however,* that such appointment of the Loan Trustee as the duly constituted agent and attorney-in-fact of the Owner Trustee shall not extend, or in any manner relate, to any rights, powers and privileges of the Owner or the Owner Trustee (in its individual capacity) in respect of Excluded Amounts. If no Event of Default (or any event or condition which, after notice or the passage of time or both, could constitute an Event of Default) of which the Loan Trustee shall have knowledge shall have occurred and be continuing, the Loan Trustee will not take any such action under or in connection with any such agreements or instruments, or enforce the same or give any notice, consent or approval, or make any demand for payment, under or in connection with any of the foregoing, without, in each case, the prior written consent of the Owner Trustee; *provided, however,* that the prior written consent of the Owner Trustee shall not be required in connection with any amendment of or supplement to the Guaranty (other than any amendment of or supplement to Section 2 or Section 3 or § § 5.2(d), 5.7(b), 5.8, 5.12, or 5.17 thereof); and

(c) except to the extent that the same have been properly paid to the Owner Trustee by the Loan Trustee, the Owner Trustee will remit to the Loan Trustee, forthwith upon receipt, all monies and property of any kind received by it under or in respect of the Lease, the Guaranty, any Purchase Order, any Purchase Order Assignment or any Bill of Sale (other than Excluded Amounts), without offset, counterclaim, deduction, suspension, abatement or diminution, and, subject to the rights of the Owner Trustee to receive amounts upon and subject to the terms and conditions of Article V and Section 12.06 hereof, the Owner Trustee will not seek to recover from the Loan Trustee any monies paid to the Loan Trustee by virtue of this Section 8.04.

Section 8.05. *Recording, etc.* The Owner Trustee covenants and agrees that it will cooperate in connection with the taking of all action requested from time to time by the Loan Trustee to maintain and preserve the lien of this Indenture (including, without limitation, the proper filing, recording, registration, refiling, re-recording and re-registration of this Indenture or any Supplemental Indenture, as the case may be, so as to make and keep effective the lien on the Trust Indenture Estate intended to be created hereby, paying all required taxes and filing, recording and registration fees in connection therewith and executing and delivering such instruments of further assurance as the Loan Trustee may from time to time request to evidence the protection of the lien of this Indenture and the estates, interests, rights, powers, privileges and immunities conferred or intended to be conferred upon the Loan Trustee and the holders of the Notes hereby) so long as any of the Notes shall be outstanding, it being understood that the Owner Trustee shall have no such obligations absent any such request.

## ARTICLE IX

### Rights and Duties of the Loan Trustee and the Owner Trustee

Section 9.01. *Rights of Loan Trustee.* The Loan Trustee shall have the right, power and authority at all times to do all things not inconsistent with the express provisions of this



Indenture that it deems necessary or advisable in order (a) to enforce the provisions of this Indenture, (b) to take any action with respect to an Event of Default, (c) to institute, appear in or defend any suit or other proceeding with respect to an Event of Default, or (d) otherwise to protect the interests of the holders of the Notes at any time outstanding.

Section 9.02. *Notice of Events of Default; Action upon Instructions.* (a) If the Owner Trustee or the Loan Trustee shall have knowledge of an Event of Default (or any event or condition which, after notice or the passage of time or both, could constitute an Event of Default), it shall give prompt written notice thereof to the Loan Trustee (if such notice shall be given by the Owner Trustee), the Owner Trustee (if such notice shall be given by the Loan Trustee) and the holders of Notes then outstanding unless such Event of Default (or other such event or condition) shall have been cured before the giving of such notice. Subject to the following provisions of this Subsection (a) and to the provisions of Section 9.03 hereof, the Loan Trustee shall take such action, or refrain from taking such action, with respect to such Event of Default (or other such event or condition) as the Loan Trustee shall be instructed in writing to take, or to refrain from taking, by a Majority in Interest of Noteholders; *provided, however,* that, notwithstanding the foregoing, in the event that the holders of at least 25% in aggregate unpaid principal amount of Notes outstanding shall, in accordance with Section 12.02 hereof, request the Loan Trustee to declare this Indenture to be in default or to declare the unpaid principal of the Notes then outstanding, and the interest accrued and unpaid thereon, to be immediately due and payable, the Loan Trustee shall act, and be fully protected in acting, in accordance with any such written request. If the Loan Trustee shall not have received written instructions as above provided within twenty days after the aforesaid notice shall have been delivered by the Owner Trustee or the Loan Trustee, as the case may be, the Loan Trustee shall take such action, or refrain from taking such action, with respect to such Event of Default (or other such event or condition) as it shall determine to be advisable and in the best interest of the holders of the Notes; *provided, however,* that, during the continuance of any Event of Default hereunder (whether before or after giving the aforesaid written notice thereof), the Loan Trustee shall exercise such of the rights and powers vested in it by this Indenture, and shall use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs, and every provision of this Indenture relating to the conduct or affecting the liability of, or affording protection to, the Loan Trustee shall be subject to this proviso, during the continuance of any Event of Default, whether or not therein expressly so provided.

(b) Subject to the provisions of Sections 9.03 and 12.10 hereof, upon the written instructions at any time and from time to time of a Majority in Interest of Noteholders, the Loan Trustee shall take such of the following actions with respect to the Trust Indenture Estate as may be specified in such instructions: (i) give any notice, direction, waiver or consent, or exercise any right, power, privilege or remedy, hereunder or under or in respect of the Lease, the Guaranty, any Purchase Order, any Purchase Order Assignment or any Bill of Sale, or under or in respect of any agreement, instrument or other document contemplated by any of the foregoing, or in respect of all or any portion of the Trust

Indenture Estate, or take any other action as shall be specified in such instructions (including, without limitation, performance of any obligations of the Owner Trustee as lessor under the Lease); and (ii) approve as satisfactory to it all matters required by the terms of any of the foregoing agreements or instruments to be satisfactory to the Loan Trustee.

(c) The Loan Trustee shall execute and deliver, and shall file, record or register, or cause to be filed, recorded or registered, such instruments, documents, deeds, conveyances, financing statements and continuation statements relating to the lien of this Indenture as may be specified from time to time by written instructions from a Majority in Interest of Noteholders.

Section 9.03. *Indemnification.* The Loan Trustee shall not be required to take action, or to refrain from taking action, in accordance with instructions from Noteholders pursuant to Section 9.02 or Article XII hereof unless one or more holders of Notes then outstanding shall have agreed to indemnify the same, in manner and form reasonably satisfactory to the Loan Trustee, against any reasonable liability, cost or expense (including reasonable counsel fees and disbursements) which may be incurred in connection therewith (the affidavit and undertaking of any original purchaser of Notes, or of any institutional holder of a Note, being understood and agreed by the Loan Trustee to constitute satisfactory indemnity under the foregoing provision), and any amounts advanced by any holders of Notes under this Section 9.03 or otherwise hereunder shall constitute indebtedness hereunder secured by the lien of this Indenture on the Trust Indenture Estate. The Loan Trustee shall not be required to take or refrain from taking any particular action in accordance with instructions from a Majority in Interest of Noteholders pursuant to Section 9.02 or Article XII hereof, nor shall any other provision of this Indenture be deemed to impose a duty on the Loan Trustee to take or refrain from taking any particular action, if the Loan Trustee shall have received an opinion of counsel, in form and substance satisfactory to a Majority in Interest of Noteholders, that the Loan Trustee's taking or refraining from taking such action would violate the terms hereof or applicable law.

Section 9.04. *No Duties Except as Specified in Indenture or Instructions.* The Loan Trustee shall not have any duty or obligation to manage, control, use, sell, dispose of or otherwise deal with the Trust Indenture Estate (except any monies and securities held by the Loan Trustee in accordance with the provisions of this Indenture), or otherwise to take or refrain from taking action under or in respect of this Indenture, except as otherwise expressly provided by the terms of this Indenture (including the proviso to the final sentence of Section 9.02(a) hereof) or as otherwise provided in written instructions received pursuant to Section 9.02 or Article XII hereof; and no implied duties or obligations in respect thereof shall be read into this Indenture against the Loan Trustee. Notwithstanding the foregoing, the Loan Trustee agrees that it will (a) examine all written materials received by it under or in respect of this Indenture, with a view to determining whether such materials comply as to form with the terms of this Indenture, and (b) at its own cost and expense, forthwith take such action as may be necessary duly to discharge and satisfy of record all Liens on the Trust Indenture Estate, however arising, which result from acts of or claims against the Loan Trustee and which are not permitted hereunder.

Section 9.05. *No Action Except Under Indenture or upon Instructions.* The Loan Trustee agrees that it will not manage, control, use, sell, dispose of or otherwise deal with the Trust Indenture Estate except in accordance with the powers granted to, or the authority conferred upon, it in or pursuant to this Indenture.

Section 9.06. *Acceptance of Trusts and Duties.* The Loan Trustee accepts the trusts hereby created and agrees to perform the duties herein required of it, and to exercise the rights, powers and privileges herein conferred upon it, upon and subject to the terms and conditions hereof, and agrees to hold its interest in, and to receive and disburse all proceeds of, the Trust Indenture Estate, but only upon the terms of this Indenture.

Section 9.07. *Limitation on Duties.* Except in accordance with written instructions received pursuant to Section 9.02 or Article XII hereof or as otherwise provided herein, and except as otherwise provided in (and without limiting) Section 9.04 hereof and the proviso to the final sentence of Section 9.02(a) hereof, the Loan Trustee shall not have a duty (a) to effect or maintain any filing, recording or registration of this Indenture, (b) to pay or discharge any tax, assessment or other governmental charge or any Lien of any kind owing with respect to, or assessed, levied or imposed upon, any portion of the Trust Indenture Estate, (c) to verify any financial statements of the Lessee, or (d) to inspect the Trust Indenture Estate (other than any monies or securities held by the Loan Trustee in accordance with the provisions of this Indenture). Notwithstanding the foregoing, the Loan Trustee will furnish to the holders of Notes named in the Participation Agreement, so long as any such person or its nominee shall hold any of the Notes, and to each subsequent holder of the Notes then outstanding, promptly upon receipt by the Loan Trustee thereof, duplicates or copies of all reports, notices, requests, demands, certificates, financial statements and other instruments or papers furnished to or received by the Loan Trustee hereunder or in respect hereof and not otherwise required by the terms of this Indenture, the Participation Agreement or the Lease to be delivered to the holders of outstanding Notes.

Section 9.08. *No Representations or Warranties as to Trust Indenture Estate or Agreements.* The Owner Trustee (in its individual capacity and as trustee) and the Loan Trustee make (a) NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE VALUE, CONDITION, SAFETY, MERCHANTABILITY OR FITNESS FOR USE OF THE UNITS, OR ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE UNITS (which Units were selected by the Lessee on the basis of its own judgment without reliance upon any statements, representations or warranties made by the Owner Trustee or the Loan Trustee) except as set forth in the Participation Agreement and except that the Owner Trustee hereby represents and warrants to the Loan Trustee and each of the holders of the Notes that the Units are and will remain free of Liens, except the lien of this Indenture and any Liens permitted under the provisions (other than clause (ii)) of Section 6 of the Lease, and (b) no representation or warranty as to the legality, validity, binding effect or enforceability of the Participation Agreement, the Trust Agreement, this Indenture, the Lease, the Guaranty, the Purchase Orders, the Purchase Order Assignments or the Bills of Sale, or as to the correctness of any statement (other than their own) contained in any

thereof, except that the Owner Trustee and the Loan Trustee each hereby represents and warrants to each of the holders of the Notes that, with respect to this Indenture, and, in the case of the Owner Trustee, with respect to each of said other documents to which it is a party, (i) it has the legal power and authority to execute, deliver and perform such documents, (ii) each of such documents executed by such Trustee has been duly executed and delivered by it, and (iii) each of such documents executed by such Trustee constitutes the legal, valid and binding obligation of such Trustee, enforceable in accordance with the terms thereof.

Section 9.09. *Reliance; Agents; Advice of Counsel; Notices.* Except as otherwise provided by the terms of this Indenture (including the proviso to the final sentence of Section 9.02(a) hereof), the Loan Trustee shall enjoy the following privileges and immunities: (a) it shall incur no liability to anyone in acting upon any signature, instrument, notice, resolution, request, instruction, consent, direction, order, certificate, report, opinion or other document or paper reasonably believed by it to be genuine and to have been signed by the proper person or persons; (b) it may accept a copy of a resolution of the Board of Directors of the Lessee certified by the Secretary or an Assistant Secretary thereof as conclusive evidence that such resolution has been duly adopted by said Board and is in full force and effect; (c) as to any other fact or matter the manner of ascertainment of which is not specifically set forth herein, it may for all purposes hereof rely on an Officer's Certificate as to such fact or matter, and such Officer's Certificate shall constitute full protection to it for any action reasonably taken, suffered or omitted to be taken by it in good faith reliance thereon; and (d) in the administration of the trusts created by this Indenture, it may perform its powers and duties hereunder through agents or attorneys, and may consult with counsel, accountants and other skilled persons, *provided*, in each case, that the same shall have been selected by it with due care.

Section 9.10. *Not Acting in Individual Capacity.* It is expressly understood and agreed by and among the Owner Trustee, the Loan Trustee, the holder of any Note and their respective successors and assigns that (a) this Indenture (except as stated below) and each Note have been or will be executed and delivered by the Owner Trustee not individually or personally, but solely as Trustee under the Trust Agreement in the exercise of the power and authority conferred on and vested in it as such Trustee; (b) except for the further provisions of this Section 9.10 and the provisions of Section 13 of the Participation Agreement, as they relate to the Owner Trustee, nothing contained in this Indenture or in any Note shall be construed as creating any liability of the Owner Trustee, individually or personally, for failure to perform any covenant, either expressed or implied, or for the inaccuracy of any representation and warranty, contained herein or therein (including, without limitation, those contained in Section 9.08 hereof), all such liability (except as aforesaid) being expressly waived by the Loan Trustee and the holder of any Note, and by each and every person now or hereafter claiming by, through or under any such person; and (c) so far as the Owner Trustee, individually or personally, is concerned, the Loan Trustee and the holder of any Note, and any person claiming by, through or under any such person, shall (except as aforesaid) look solely to the Trust Indenture Estate for the payment of any indebtedness or liability evidenced by any Note or resulting from the non-performance by the Owner Trustee of any covenant, or the inaccuracy of any representation and warranty made by the same, hereunder or thereunder. Notwithstanding the foregoing, (i) the Owner Trustee (in its

individual capacity) will furnish to the Loan Trustee, promptly upon receipt by the Owner Trustee thereof, duplicates or copies of all reports, notices, requests, demands, certificates, financial statements and other instruments or papers furnished to or received by the Owner Trustee under or in connection with the Lease, the Guaranty, the Purchase Orders, the Purchase Order Assignments and the Bills of Sale, and not, to the Owner Trustee's knowledge (after due inquiry of the Loan Trustee), received by the Loan Trustee; and (ii) upon the transfer of any beneficial interest of the Owner in accordance with the Trust Agreement, the Owner Trustee (in its individual capacity) will give prompt written notice to the Loan Trustee of the name and address of the person or persons to whom such interest shall have been transferred, and will furnish to the Loan Trustee in writing (x) the name of the transferor and the amount of the beneficial interest transferred, and (y) information sufficient to demonstrate that the transfer of such beneficial interest shall have been effected in compliance with the provisions of the Participation Agreement and of the Trust Agreement.

## ARTICLE X

### Successor Trustees, Separate Trustees and Co-Trustees

Section 10.01. *Successor Owner Trustees.* In the case of any appointment of a successor Owner Trustee pursuant to the Trust Agreement, or any merger, conversion, consolidation or transfer of substantially all the assets of the Owner Trustee, the successor Owner Trustee shall give prompt written notice thereof to the Loan Trustee and the holders of Notes then outstanding.

Section 10.02. *Successor Loan Trustees.* (a) The Loan Trustee may resign at any time with or without cause by giving at least sixty days' prior written notice to the Owner Trustee and the holders of the Notes then outstanding, such resignation to become effective on the acceptance of appointment by a temporary or successor Loan Trustee, as the case may be, pursuant to the provisions of Subsection (b) of this Section 10.02. In addition, a Majority in Interest of Noteholders at any time and from time to time with or without cause may remove the Loan Trustee by an instrument in writing delivered to the Owner Trustee and the Loan Trustee, such removal to become effective at the time designated in such instrument; and, in such event, the Loan Trustee shall promptly notify the Owner Trustee and the holders of Notes then outstanding thereof in writing. In the case of the resignation or removal of the Loan Trustee, a Majority in Interest of Noteholders may appoint a successor Loan Trustee by an instrument signed by such holders. If a successor Loan Trustee shall not have been appointed by a Majority in Interest of Noteholders within sixty days after any such resignation or removal, the Loan Trustee or any holder of a Note then outstanding may apply to any court of competent jurisdiction to appoint a successor Loan Trustee to act until such time, if any, as a successor Loan Trustee shall have been appointed by a Majority in Interest of Noteholders as above provided. Any successor Loan Trustee so appointed by such court shall immediately and without further act or instrument be superseded by any successor Loan Trustee appointed by a Majority in Interest of Noteholders as above provided which shall have accepted such appointment in accordance with the provisions of Subsection (b) of this Section 10.02.

In the case of any removal of the Loan Trustee in accordance with the provisions of the preceding paragraph, the Owner Trustee shall, whenever necessary to avoid or fill a vacancy in the office of the Loan Trustee, appoint a temporary Loan Trustee to act until a successor Loan Trustee shall be appointed in either of the manners provided in the preceding paragraph (such temporary Loan Trustee being superseded, immediately and without further act or instrument, by any successor Loan Trustee so appointed which shall have accepted such appointment in accordance with the provisions of Subsection (b) of this Section 10.02).

(b) Any temporary or successor Loan Trustee, whether appointed by the Owner Trustee, a Majority in Interest of Noteholders or a court, shall execute and deliver to the Owner Trustee and the predecessor Loan Trustee an instrument accepting such appointment, and thereupon such temporary or successor Loan Trustee, without further act or instrument, shall become vested with all the interests, properties, rights, powers and privileges, and be required to perform all the duties and execute all the trusts, of the predecessor Loan Trustee hereunder with like effect as if originally named the Loan Trustee herein; nevertheless, upon the written request of such temporary or successor Loan Trustee, such predecessor Loan Trustee shall execute and deliver an instrument transferring to such temporary or successor Loan Trustee, upon the trusts herein expressed, all the interests, properties, rights, powers and privileges of such predecessor Loan Trustee. In either event, such predecessor Loan Trustee shall duly assign, transfer, deliver and pay over to such temporary or successor Loan Trustee all monies, securities and other property then held by such predecessor Loan Trustee hereunder.

(c) Notwithstanding the foregoing provisions of this Section 10.02, no person may act as temporary or successor Loan Trustee hereunder unless such person shall have a combined capital and surplus of at least \$100,000,000 (or such lesser amount acceptable to a Majority in Interest of Noteholders).

(d) Any corporation into which the Loan Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Loan Trustee shall be a party, or any person to which substantially all the assets of the Loan Trustee (or substantially all the corporate trust business of the Loan Trustee) may be transferred, shall, subject to compliance with the provisions of Subsection (c) above, be the Loan Trustee under this Indenture without further act or instrument; *provided, however*, that, upon the written request of any holder of a Note then outstanding, such successor Loan Trustee shall execute and deliver to all holders of Notes then outstanding an instrument acknowledging its position as Loan Trustee and assuming the obligations of the Loan Trustee hereunder.

**Section 10.03. *Appointment of Additional Trustees, Separate Trustees and Co-Trustees.*** (a) Whenever the Loan Trustee shall, in the exercise of due care, deem such action necessary or prudent in order to conform to any law of any jurisdiction in which all or any portion of the Trust Indenture Estate shall be situated or in order to make any claim or commence or maintain any proceeding with respect to the Trust Indenture Estate, the Notes or the Participation Agreement, or if the Loan Trustee shall receive an opinion of counsel

that such action is so necessary or prudent in the interest of the holders of the Notes, or if the Loan Trustee shall be requested to take such action by a Majority in Interest of Noteholders, then the Owner Trustee and the Loan Trustee shall execute and deliver a Supplemental Indenture and all other agreements, instruments and other documents necessary or appropriate to constitute another bank or trust company or one or more individuals, approved by the Loan Trustee in the exercise of due care, either to act as additional Trustee or Trustees or co-Trustee or co-Trustees of all or any portion of the Trust Indenture Estate, jointly with the Loan Trustee, or to act as separate Trustee or Trustees of any portion of the Trust Indenture Estate, in any such case with such powers as may be provided in such Supplemental Indenture, and to vest in such bank, trust company or individual as such additional Trustee, co-Trustee or separate Trustee, as the case may be, any interest, property, right, power or privilege of the Loan Trustee, subject to the remaining provisions of this Section 10.03. In the event that the Owner Trustee shall not have joined in the execution of such Supplemental Indenture, and of all such agreements, instruments and other documents (if any), within fifteen days after the receipt of a written request from the Loan Trustee to do so, or in case an Event of Default shall have occurred and be continuing, the Loan Trustee may act under the foregoing provisions of this Section 10.03 without the concurrence of the Owner Trustee; and the Owner Trustee hereby irrevocably makes, constitutes and appoints the Loan Trustee as its agent and attorney-in-fact to act for it under the foregoing provisions of this Section 10.03 in either of such contingencies. The Loan Trustee may execute, deliver and perform any conveyance, assignment, agreement, instrument or other document in writing as may be required by any additional Trustee, co-Trustee or separate Trustee for more fully and certainly vesting in and confirming to it or him any interest, property, right, power or privilege which by the terms of such Supplemental Indenture is expressed to be conveyed to or conferred upon such additional Trustee, co-Trustee or separate Trustee, as the case may be, and the Owner Trustee shall, upon the Loan Trustee's written request, join therein and execute, acknowledge and deliver the same; and the Owner Trustee hereby irrevocably makes, constitutes and appoints the Loan Trustee as its agent and attorney-in-fact to act for it in its name, place and stead to execute, acknowledge and deliver any such conveyance, assignment, agreement, instrument or other document in the event that the Owner Trustee shall not execute and deliver the same within fifteen days after receipt by it of such request from the Loan Trustee to do so.

(b) Every additional Trustee, co-Trustee and separate Trustee hereunder shall, to the extent permitted by law, be appointed and act in accordance with the following provisions and conditions:

(i) all rights, powers, privileges, duties and obligations conferred or imposed upon the Loan Trustee in respect of the receipt, custody, investment and payment of monies shall be exercised solely by the Loan Trustee;

(ii) all other rights, powers, privileges, duties and obligations conferred or imposed upon the Loan Trustee shall be conferred or imposed upon and exercised or performed by the Loan Trustee, except to the extent that under any law of any jurisdiction in which any particular act or acts are to be performed the Loan Trustee shall be incompetent or unqualified to perform such act or acts, in which event such

rights, powers, privileges, duties and obligations (including the holding of title to the Trust Indenture Estate in any such jurisdiction) shall be exercised and performed by such additional Trustee or Trustees, co-Trustee or co-Trustees or separate Trustee or Trustees;

(iii) no such additional Trustee, co-Trustee or separate Trustee shall exercise any power created hereby or provided for hereunder except jointly with, or with the consent of, the Loan Trustee; and

(iv) no such additional Trustee, co-Trustee or separate Trustee shall be personally liable by reason of the act or omission of any other additional Trustee, co-Trustee or separate Trustee, or the Loan Trustee, hereunder.

If at any time the Loan Trustee shall receive an opinion of counsel to the effect that it is no longer necessary or prudent in the interest of the holders of the Notes to continue the appointment of any additional Trustee, co-Trustee or separate Trustee, as the case may be, or shall be requested in writing by a Majority in Interest of Noteholders to terminate any such appointment, then the Owner Trustee and the Loan Trustee shall promptly execute and deliver a Supplemental Indenture and all other agreements, instruments and other documents necessary or appropriate to remove such additional Trustee, co-Trustee or separate Trustee. In the event that the Owner Trustee shall not have joined in the execution of such Supplemental Indenture, and of all such agreements, instruments or other documents (if any), the Loan Trustee may act on behalf of the same to the same extent as provided above.

(c) Any additional Trustee, co-Trustee or separate Trustee may at any time by a written instrument constitute the Loan Trustee its or his agent and attorney-in-fact, with full power and authority, to the extent permitted by law, to do any and all acts and things and exercise any and all discretion permitted by it or him, for and on its or his behalf and in its or his name. In case any such additional Trustee, co-Trustee or separate Trustee shall resign or be removed or for any reason such office shall become vacant, all the interests, properties, rights, powers, privileges, trusts, duties and obligations of such additional Trustee, co-Trustee or separate Trustee, as the case may be, in respect of the Trust Indenture Estate, so far as permitted by law, shall vest in and be exercised by the Loan Trustee without the appointment of a successor to such additional Trustee, co-Trustee or separate Trustee unless and until a successor shall be appointed in the manner provided above.

(d) Each additional Trustee, co-Trustee and separate Trustee appointed pursuant to this Section 10.03 shall be subject to, and shall have the benefit of, the provisions of this Indenture insofar as they apply to the Loan Trustee.

## ARTICLE XI

### Discharge

Section 11.01. *Discharge.* At such time (but only at such time) when the Notes shall have become due and payable and when the whole amount of the principal and interest so



due and payable in respect of the Notes then outstanding and all other sums payable hereunder shall have been paid or shall be deemed to have been paid, as permitted by the express terms hereof, then this Indenture and the interests, rights, powers and privileges herein. Granted shall cease, terminate and be of no further effect (except that the Loan Trustee shall be obligated to pay to holders of the Notes then outstanding monies held by the Loan Trustee for the payment of the principal of and the interest on the Notes then outstanding and to other persons entitled thereto all other sums payable hereunder), and the Loan Trustee shall, after the payment of the principal of and the interest on the Notes then outstanding and all other sums payable hereunder, apply any remaining monies held by it as provided in Section 5.01 hereof and the Loan Trustee shall, upon the written request of the Owner Trustee, execute and deliver to or as directed in writing by the Owner Trustee appropriate instruments presented (and acceptable) to the Loan Trustee by the Owner Trustee for the purpose of releasing the Trust Indenture Estate, other than such monies so held, from the lien of this Indenture, or assigning such lien, without recourse or warranty. The Notes and other sums payable hereunder shall be deemed to have been paid if sufficient monies shall have been set apart by or deposited in trust with the Loan Trustee to pay the same, and if the Loan Trustee shall have received irrevocable directions so to pay such monies forthwith (and, as to any Notes to be prepaid, if any notice provided for in respect of such prepayment shall have been given or provision therefor satisfactory to the Loan Trustee shall have been made and the conditions in respect of such prepayment shall have been satisfied).

## ARTICLE XII

### Defaults and Remedies

Section 12.01. *Events of Default.* Each of the following events or conditions shall constitute an Event of Default hereunder (whether or not any such event or condition shall be voluntary or involuntary, or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any governmental or public authority or agency):

(a) the Owner Trustee shall fail to make or cause to be made any payment or prepayment of principal of, or any payment of interest on, any Note required to be made by it thereunder or hereunder, when and as the same shall become due and payable, and such failure shall continue unremedied for five days; or

(b) the Owner Trustee shall fail to perform or observe any other covenant, condition or agreement herein or in the Notes to be performed or observed by it, and such failure shall continue unremedied for a period of thirty days after written or telegraphic notice thereof shall have been given to the Lessee and the Owner Trustee by the Loan Trustee, or to the Loan Trustee, the Lessee and the Owner Trustee by the holders of at least 10% in aggregate principal amount of the Notes outstanding, which written or telegraphic notice shall state that it is a "Notice of Default" under this Indenture; or

(c) the Owner Trustee or the Owner (or any other holder of any beneficial interest under the Trust Agreement) shall commence a voluntary case under any chapter of the Federal Bankruptcy Code, or shall consent to (or fail to controvert in a timely manner) the commencement of an involuntary case against the Owner Trustee or the Owner (or any other holder of any beneficial interest under the Trust Agreement) under said Code; or

(d) the Owner Trustee or the Owner (or any other holder of any beneficial interest under the Trust Agreement) shall institute proceedings for liquidation, rehabilitation, readjustment or composition (or for any related or similar purpose) under any law (other than the Federal Bankruptcy Code) relating to financially distressed debtors, their creditors or property, or shall consent to (or fail to controvert in a timely manner) the institution of any such proceedings against the Owner Trustee or the Owner (or any other holder of any beneficial interest under the Trust Agreement); or

(e) the Owner Trustee or the Owner (or any other holder of any beneficial interest under the Trust Agreement) shall be insolvent (within the meaning of any applicable law), or shall be unable, or shall admit in writing its inability, to pay its debts generally as they come due, or shall make an assignment for the benefit of creditors or enter into any arrangement for the adjustment or composition of debts or claims; or

(f) a court or other governmental authority or agency having jurisdiction in the premises shall enter a decree or order (i) for the appointment of a receiver, liquidator, assignee, trustee or sequestrator (or other similar official) of the Owner Trustee or the Owner (or any other holder of any beneficial interest under the Trust Agreement), or of any part of the property of such person, or for the winding-up or liquidation of the affairs of such person, and such decree or order shall remain in force undischarged and unstayed for a period of more than thirty days, or (ii) for the sequestration or attachment of any property of the Owner Trustee or the Owner (or any other holder of any beneficial interest under the Trust Agreement) without its unconditional return to the possession of such person, or its unconditional release from such sequestration or attachment, within thirty days thereafter; or

(g) a court having jurisdiction in the premises shall enter an order for relief in any involuntary case commenced against the Owner Trustee or the Owner (or any other holder of any beneficial interest under the Trust Agreement) under the Federal Bankruptcy Code, and such order shall remain in force undischarged and unstayed for a period of more than thirty days; or

(h) any representation or warranty made by the Owner Trustee or the Owner herein, in the Participation Agreement or in any agreement, instrument or other document furnished to the Loan Trustee or any Lender in connection with, or pursuant to, this Indenture or the Participation Agreement shall have been or shall be incorrect or misleading in any material respect when made; or

(i) either the Owner Trustee or the Owner (or any other holder of any beneficial interest under the Trust Agreement) shall fail to perform or observe any covenant, condition or agreement to be observed or performed by it under the Participation Agreement; or

(j) any Lease Default shall occur and be continuing; or

(k) Goldman, Sachs & Co. shall fail to make or caused to be made any payment in respect of any fee, expense or disbursement referred to in Section 8 of the Participation Agreement when and as the same shall become due and payable, and such failure shall continue unremedied for a period of ten days after written or telegraphic notice thereof shall have been given to Goldman, Sachs & Co., the Lessee and the Owner Trustee by the Loan Trustee, or to Goldman, Sachs & Co., the Loan Trustee, the Lessee and the Owner Trustee by the holders of at least 10% in aggregate principal amount of the Notes outstanding, which written or telegraphic notice shall state that it is a "Notice of Default" under this Indenture.

Section 12.02. *Acceleration of Notes; Declaration of Default.* If an Event of Default shall have occurred and be continuing, the Loan Trustee (a) may (and, upon the written request of the holders of at least 25% in aggregate unpaid principal amount of the Notes outstanding, shall), by written notice delivered to the Owner Trustee, declare this Indenture to be in default, and (b) may (and, upon the written request of the holders of at least 25% in aggregate unpaid principal amount of the Notes outstanding, shall), in the same manner, further declare the unpaid principal of the Notes then outstanding, and the interest accrued and unpaid thereon, to be immediately due and payable. Upon any declaration by the Loan Trustee pursuant to clause (b) of the preceding sentence, the unpaid principal amount of the Notes then outstanding, and the interest accrued and unpaid thereon, shall thereupon, without further act or instrument, become and be immediately due and payable.

Section 12.03. *Surrender of Possession; Rights and Duties of Loan Trustee in Possession.* After this Indenture shall have been declared in default pursuant to clause (a) of the first sentence of Section 12.02 hereof, but, subject, in the event that a Lease Default shall not then have occurred and be continuing, to the interests and rights of the Lessee under the Lease, (a) the Owner Trustee, upon demand by the Loan Trustee at any time and from time to time, shall forthwith assemble, or cause to be assembled, the Trust Indenture Estate, or any specified portion thereof, and make, or cause to be made, the same available to the Loan Trustee at any place or places designated by the Loan Trustee and reasonably convenient for the purposes of the Loan Trustee and the Owner Trustee, and, in any event, upon demand by the Loan Trustee at any time and from time to time, the Owner Trustee shall forthwith surrender, or cause to be surrendered, possession of the Trust Indenture Estate, and, to the extent permitted by, and subject to compliance with any mandatory requirements of, applicable law then in effect, the Loan Trustee, by such officer or agent as it may appoint, may take possession of all or any portion of the Trust Indenture Estate (together with the books, papers and logs of the Owner Trustee pertaining thereto), and hold, operate and manage such property (and from time to time make such necessary or appropriate repairs and improvements), and exercise such rights, powers and privileges, as shall be determined

by the Loan Trustee (the Loan Trustee not having any duty to the Owner Trustee, however, to keep all or any portion of the Trust Indenture Estate identifiable), and the Loan Trustee is hereby authorized by the holders of Notes to make any filings, recordings and registrations as may be necessary to establish or publish notice of the Loan Trustee's rights to possession, operation and management of all or any portion of the Trust Indenture Estate; (b) the Loan Trustee may lease all or any portion of the Trust Indenture Estate in the name and for the account of the Owner Trustee, and, whether or not so leasing all or any portion of the Trust Indenture Estate, the Loan Trustee may collect, receive and sequester the rents, products, revenues and other income therefrom, and out of the same and any monies received from any receiver (or other similar official) of any portion thereof pay and/or create proper reserves for the payment of all proper costs and expenses of taking, holding and managing all or any portion of the Trust Indenture Estate, including reasonable compensation to the Loan Trustee, its agents and counsel and any charges of the Loan Trustee hereunder, and any taxes and assessments and other charges which the Loan Trustee may deem it advisable to pay, and all expenses of necessary or appropriate repairs and improvements, and apply the remainder of the monies so received in accordance with the provisions of Section 12.06 hereof; and (c) the Loan Trustee may, to the extent permitted by, and subject to compliance with any mandatory requirements of, applicable law then in effect, sell the Trust Indenture Estate, as a whole or in separate portions, at public or private sale, as required or permitted by applicable law. Whenever all amounts owing and unpaid under the Notes and otherwise hereunder shall have been paid and no Event of Default shall be continuing, the Loan Trustee shall surrender possession to the Owner Trustee of any of its property (other than any monies and securities held by the Loan Trustee in accordance with the provisions of this Indenture) of which it shall have taken possession pursuant to this Section 12.03 and not theretofore sold or leased as above provided; *provided, however*, that the right of entry granted above shall exist upon any subsequent Event of Default.

To the extent permitted by, and subject to compliance with any mandatory requirements of, applicable law then in effect, the Loan Trustee may postpone the sale of all or any portion of the Leased Property, or any other property constituting a portion of the Trust Indenture Estate, by announcement at the time and place of such sale, and from time to time thereafter may further postpone such sale by announcement at the time of sale fixed by the preceding postponement, or may postpone any sale without notice to the extent permitted by applicable law.

Upon the completion of any sale or sales made by the Loan Trustee under or by virtue of this Article XII, the Loan Trustee shall execute and deliver to the purchaser or purchasers a good and sufficient assignment and other instruments conveying, assigning and transferring all its right, title and interest in and to the property and rights sold. The Loan Trustee (including the successors and assigns of any particular person which shall at the time be the Loan Trustee) is hereby irrevocably appointed the duly constituted agent and attorney-in-fact of the Owner Trustee, in its name and stead to make all necessary conveyances, assignments, transfers and deliveries of the property and rights so sold, and for that purpose the Loan Trustee may execute all necessary instruments of conveyance, assignment and transfer and may substitute one or more persons with like power, the Owner

Trustee hereby ratifying and confirming all that its said agent and attorney-in-fact or such substitute or substitutes shall lawfully do by virtue hereof. Nevertheless, the Owner Trustee, if so requested in writing by the Loan Trustee, shall ratify and confirm any such sale or sales by executing and delivering to the Loan Trustee or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of the Loan Trustee, for that purpose and as may be designated in such request. Any such sale or sales made under or by virtue of this Article XII, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, shall operate to divest all the right, title, interest, claim and demand whatsoever, whether at law or in equity, of the Owner Trustee in and to the properties and rights so sold and which have been granted hereunder, and shall be a perpetual bar both at law and in equity against the Owner Trustee, and its successors and assigns, and against any and all persons claiming or who may claim the same or any part thereof from, through or under the Owner Trustee, or its successors or assigns.

To the full extent that it may lawfully do so, the Owner Trustee hereby waives the benefit of, and agrees that it will not at any time insist upon, plead or in any manner whatever claim the advantage of, (a) any stay, exemption, extension or redemption law, or any law requiring marshalling of assets, now or hereafter in force, or (b) any law now or hereafter in force providing for valuation or appraisal of the Trust Indenture Estate, or any portion thereof, prior to or in connection with any sale thereof to be made in accordance herewith or pursuant to the decree of any court of competent jurisdiction.

The receipt of the Loan Trustee for the purchase money paid as a result of any such sale shall be a sufficient discharge therefor to any purchaser of the property sold as aforesaid. No such purchaser, or any representatives, grantees or assigns thereof, after paying such purchase money and receiving such receipt, shall be bound to see to the application of such purchase money upon or for any trust or purpose of this Indenture, or shall be answerable in any manner whatsoever for any loss, misapplication or nonapplication of any such purchase money or any part thereof, nor shall any such purchaser be bound to inquire as to the authorization, necessity, expediency or regularity of any such sale.

Upon any sale made under or by virtue of this Article XII, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, any purchaser shall be entitled to use and apply the Notes, and the amount of interest accrued and unpaid thereon, for or in settlement or payment of the purchase price, or any part thereof, of the property purchased, by presenting such Notes in order that there may be credited thereon the sums payable out of the net proceeds of such sale to the holder of such Notes as his ratable share of such net proceeds, after the deduction of all costs, expenses, compensation and other charges to be paid therefrom as herein provided; and thereupon such purchaser shall be credited, on account of such price payable by him, with the portion of such net proceeds that shall have been credited upon the Notes so presented on account of principal and interest.

In case of any sale of the Trust Indenture Estate, or any portion thereof, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, the principal of and accrued and unpaid interest

on the Notes then outstanding, if not already due, shall immediately become due and payable, anything in the Notes or this Indenture to the contrary notwithstanding.

Upon any sale made under or by virtue of this Article XII, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, the Loan Trustee, on behalf of the holders of Notes, may bid for and acquire the Leased Property or any other property being sold, or any portion thereof, and, in lieu of paying cash therefor, may make settlement for the purchase price by crediting upon the indebtedness of the Owner Trustee secured by this Indenture the net proceeds of sale after deducting therefrom the expenses of the sale and the costs of the action and any other sums which the Loan Trustee shall be authorized to deduct under this Indenture. The person making such sale shall accept such settlement without requiring the production of Notes and, without such production, there shall be deemed credited thereon the pro rata share of the net proceeds of sale ascertained and established as aforesaid.

Section 12.04. *Other Remedies; Action upon Instructions; Etc.* Upon the occurrence and continuance of an Event of Default, the Loan Trustee may (subject, in the event that a Lease Default shall not then have occurred and be continuing, to the interests and rights of the Lessee under the Lease), either after entry or without entry, pursue any available remedy (by action at law, suit in equity, sale, foreclosure by and procedure permitted by law, or otherwise) to recover amounts owing and unpaid in respect of the principal of and interest on the Notes then outstanding, or otherwise owing and unpaid under this Indenture.

Without limiting the generality of any provisions of this Indenture with respect to any rights, powers or privileges of the Loan Trustee or any holder of an outstanding Note, or with respect to the obligations of the Owner Trustee, the Owner Trustee agrees that it will not hinder, delay or impede the execution of any right, power or privilege herein granted or recognized, or exercise any rights of moratorium by law, and that it will permit the execution of every such right, power and privilege to the fullest extent permitted by applicable law.

If an Event of Default shall have occurred and be continuing, the Loan Trustee shall (subject, in the event that a Lease Default shall not then have occurred and be continuing, to the interests and rights of the Lessee under the Lease), take such action as may be specified in the written instructions of a Majority in Interest of Noteholders in accordance with Section 9.02 hereof.

No right, power or privilege by the terms of this Indenture conferred upon or reserved to the Loan Trustee or the holders of Notes is intended to be exclusive of any other right, power or privilege, but each and every one shall be cumulative and shall be in addition to any other conferred upon or reserved to the Loan Trustee or the holders of Notes hereunder or now or hereafter existing at law, in equity or by statute.

No delay or failure to exercise any right, power or privilege hereunder shall impair the same or shall be construed to be a waiver of the Event of Default (or other event or condition which, after notice or the passage of time or both, could constitute an Event of Default), if any, giving rise to the exercisability of such right, power or privilege; or to be an

acquiescence therein; and every such right, power or privilege may be exercised from time to time and as often as may be deemed expedient. No waiver hereunder of any Event of Default (or other such event or condition), if any, giving rise to the exercisability of such right, power or privilege, whether by the Loan Trustee pursuant to the provisions of Section 12.10 hereof or by the holders of the Notes, shall extend to or affect any subsequent Event of Default (or other such event or condition) or shall impair any rights, powers or privileges consequent thereon.

Section 12.05. *Appointment of Receivers.* Upon the occurrence and continuance of an Event of Default, or upon the filing by the Loan Trustee of any suit in equity or other judicial proceedings to enforce any right, power or privilege herein granted or recognized, the Loan Trustee shall be entitled, to the extent permitted by, and subject to compliance with any mandatory requirements of, applicable law then in effect, as a matter of right and without regard to the adequacy of the security, to the appointment of a receiver or receivers (or other similar officials) of all or any portion of the Trust Indenture Estate and of the rents, products, revenues and other income therefrom, with such rights, powers, privileges and immunities as the court making such appointment shall confer.

Section 12.06. *Application of Monies.* After any Event of Default (or any event or condition which, after notice or the passage of time or both, could constitute an Event of Default) of which the Loan Trustee shall have knowledge shall have occurred and while the same shall be continuing, all undisbursed payments theretofore and thereafter received and undisbursed amounts theretofore and thereafter realized by the Loan Trustee (including, without limitation, any amounts realized by the Loan Trustee from the exercise of any rights, powers or privileges under, or remedies in respect of, the Lease, this Article XII or any other agreement or instrument executed and delivered as security for the Notes) shall, except to the extent of amounts held by the Loan Trustee for prepayment of Notes or portions thereof in respect of which the Loan Trustee shall have mailed the notice of prepayment referred to in Section 6.05 hereof, be held by the Loan Trustee as a portion of the Trust Indenture Estate until such Event of Default (or other such event or condition) shall cease to be continuing; *provided, however*, that, in the event that a Lease Default shall have occurred and be continuing for a period of 270 days after the Loan Trustee shall have obtained knowledge thereof (such a period being called an "election period") and the Loan Trustee shall not have declared the Lease to be in default pursuant to the provisions thereof or the maturity of the Notes to be accelerated pursuant to Section 12.02 hereof, or shall not have elected to foreclose on all or any portion of the Trust Indenture Estate or otherwise enforce the lien of this Indenture, payments or amounts then held or thereafter received by the Loan Trustee in excess of the amounts then due under clauses "*First*", "*Second*" and "*Third*" of Section 5.01 hereof shall be distributed by the Loan Trustee to the Owner Trustee; *provided, further*, that, in the event that any Lease Default shall occur during an election period in respect of an existing Lease Default, the election period in respect of each existing Lease Default shall be measured from the date of occurrence of the most recent Lease Default; and *provided, further*, that, after the Loan Trustee (as assignee of the Owner Trustee's rights under the Lease) shall have declared the Lease to be in default pursuant to the provisions thereof or the maturity of the Notes to be accelerated pursuant to Section

12.02 hereof, or shall have elected to foreclose on all or any portion of the Trust Indenture Estate or otherwise enforce the lien of this Indenture, all such payments or amounts then held or thereafter received by the Loan Trustee shall, while any Event of Default shall be continuing, be distributed forthwith by the Loan Trustee in the following order of priority:

*First.* In the manner provided in clause "*First*" of Section of 5.01 hereof;

*Second.* In the manner provided in clause "*Second*" of Section 5.01 hereof;

*Third.* So much of such payments or amounts as shall be required to pay the interest accrued but unpaid to the date of distribution on all the Notes outstanding shall be distributed to the holders of such Notes; in case the aggregate amount to be distributed under this clause "*Third*" shall be insufficient to pay such interest in full, then such distribution shall be made to each such holder as nearly as practicable in the proportion that the aggregate amount of interest accrued but unpaid on Notes outstanding held by such holder shall bear to the interest accrued but unpaid on all the Notes outstanding, without priority of one Note over any other Note;

*Fourth.* So much of such payments or amounts as shall be required to pay in full the aggregate unpaid principal amount of all Notes outstanding shall be distributed to the holders of such Notes; in case the aggregate amount to be distributed under this clause "*Fourth*" shall be insufficient to pay such unpaid principal in full, then such distribution shall be made to each such holder as nearly as practicable in the proportion that the aggregate unpaid principal of Notes outstanding held by such holder shall bear to the aggregate unpaid principal of all the Notes outstanding, without priority of one Note over any other Note; and

*Fifth.* The balance, if any, of such payments or amounts remaining thereafter shall be distributed to the Owner Trustee.

Section 12.07. *Remedies Vested in Loan Trustee.* All rights of action under this Indenture or the Notes may be enforced by the Loan Trustee without the possession of the Notes or the production thereof in any trial or other proceeding relating thereto, and any such suit or proceeding instituted by the Loan Trustee may be brought in the name of the Loan Trustee without the necessity of joining as plaintiffs or defendants the holders of the Notes.

Section 12.08. *Rights and Remedies of Holders of Notes.* No holder of Notes shall have any right to institute any suit, action or proceeding, at law or in equity, for the enforcement of this Indenture, the execution of any trust hereof, the appointment of a receiver (or other similar official) or any other remedy in respect hereof, except during the continuance of an Event of Default of which the Loan Trustee shall have been notified, or of which it shall have knowledge, and after a Majority in Interest of Noteholders shall have made written request to the Loan Trustee and shall have offered it reasonable opportunity either to proceed to exercise the powers hereinabove granted or to institute such action, suit or proceeding in its own name, and the Loan Trustee shall have failed or refused to exercise the powers herein granted, or to institute such action, suit or proceeding in its own name, within twenty days thereafter; it being understood and intended that no one or more holders



of Notes shall have any right in any manner whatsoever to enforce any right, power or privilege hereunder except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of the holders of all Notes then outstanding.

Section 12.09. *Termination of Proceedings.* If the Loan Trustee or the holder of any Note shall have instituted any proceeding to enforce any right, power or privilege under this Indenture and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Loan Trustee or such holder, then and in every such case the Owner Trustee, the Loan Trustee and the holders of Notes shall be restored to their former positions hereunder, and all rights, powers and privileges of the Loan Trustee and the holders of Notes shall continue as if no such proceedings had been taken.

Section 12.10. *Waivers of Events of Default.* The Loan Trustee shall waive any Event of Default and its consequences, and, unless any judgment or decree for the payment of the monies due shall have been obtained or entered, shall rescind any declaration of maturity of the principal of and accrued and unpaid interest on the Notes, upon (but only upon) the written request of a Majority in Interest of Noteholders; *provided, however*, that there shall not be waived, without the consent of the holder of each outstanding Note to be affected thereby, any Event of Default resulting from a violation or failure to comply with any provision of this Indenture the amendment of which would, under the provisions of Section 13.01 hereof, require the consent of each holder of an outstanding Note to be affected thereby, nor shall any declaration of maturity of the Notes resulting therefrom be rescinded by the Loan Trustee without the consent of the holder of each such Note; and *provided, further*, that no such Event of Default shall be waived or declaration of maturity rescinded unless, prior to such waiver or rescission, the Loan Trustee shall have been paid all amounts due it of the nature referred to in clause "First" of Section 12.06 hereof, and any and all other Events of Default (or events or conditions which, after notice or the passage of time or both, could constitute Events of Default) of which the Loan Trustee shall have knowledge, other than any nonpayment of the principal of the Notes which shall have become due by declaration, shall have been cured, and, if such Event of Default shall have arisen from the violation of a payment obligation in respect of any Notes, there shall have been paid to the holder of each such Note a sum sufficient to pay all matured instalments of interest on such Note, and all principal of such Note which shall have become due otherwise than by declaration, together with interest at the rate of 16¾% per annum on the overdue principal thereof, and, if and to the extent permitted by applicable law, on overdue instalments of interest thereon. Upon any such waiver or rescission, the Owner Trustee, the Loan Trustee and the holders of the Notes shall be restored to their former positions hereunder or in respect hereof, but no such waiver or rescission shall extend to any subsequent or other Event of Default (or other such event or condition), or impair any right consequent thereon.

Section 12.11. *Certain Rights of Owner Trustee and Owner.* Anything in this Article XII to the contrary notwithstanding:

(a) *Right to Cure.* Subject to the limits set forth in the next succeeding sentence, if a Lease Default shall occur by reason of the failure of the Lessee to make any payment

of Basic Rent under the Lease when the same shall become due and payable (such a Lease Default being herein called a "Basic Rent Default"), and if there shall not be continuing any Lease Default arising by reason of any of the events or conditions specified in paragraphs (l) through (r), inclusive, of Section 13 of the Lease, the Loan Trustee may not (during the period while the Owner Trustee and the Owner shall retain any cure right under this Section 12.11), without the prior written consent of the Owner, take action to realize upon the security of the Trust Indenture Estate during a 15-day period following the giving of written notice declaring this Indenture to be in default in accordance with Section 12.02 hereof. During such 15-day period, the Owner Trustee and/or the Owner shall have the right to pay to the Loan Trustee an amount equal to any principal of and any interest on the Notes then due and payable (including interest, if any, on overdue payments of principal and interest), and such payment by the Owner Trustee and/or the Owner, as the case may be, shall be deemed to cure any Event of Default that shall have arisen on account of the occurrence of such Basic Rent Default; *provided, however*, that such right to cure shall not be exercised by the Owner in respect of more than two consecutive Basic Rent Defaults or more than four Basic Rent Defaults in the aggregate. No person exercising the right to cure any Basic Rent Default pursuant to this Section 12.11 shall obtain any Lien or other right of any kind on or in respect of the Trust Indenture Estate (including, without limitation, the Units and any Lease Rent payable under the Lease) in connection with the exercise of such cure right (whether to secure the payment of any sums paid or expenses incurred, or otherwise), nor shall any right of such person to reimbursement from the Lessee or the Guarantor for the repayment of such sums so advanced or expenses so incurred affect the prior right of the Loan Trustee to the Lease Rent payable by the Lessee under the Lease or amounts payable by the Guarantor under the Guaranty; *provided, however*, that if no Event of Default shall then have occurred and be continuing and if all payments of principal and interest due in respect of the Notes shall have been made at the time of receipt by the Loan Trustee from the Lessee or the Guarantor of an overdue instalment of Lease Rent in respect of which the Owner Trustee or any Owner shall have made payment to the Loan Trustee pursuant to this Section 12.11 and/or any interest payable by the Lessee or the Guarantor on account of such overdue instalment, such instalment and interest thereon shall be released to or at the written direction of the Owner Trustee.

(b) *Right to Purchase Notes.* If a Lease Default shall have occurred and shall not have been cured, and if the Loan Trustee shall have elected to foreclose on all or any portion of the Trust Indenture Estate by reason of the occurrence of such Event of Default, the Owner or the Owner Trustee may, but shall not be obligated to, purchase all (but not fewer than all) the Notes outstanding from the holders thereof in accordance with the following provisions. Each holder of a Note, by its acceptance of such Note issued under this Indenture, agrees that, under the circumstances referred to above, it will, upon receipt from the Owner or the Owner Trustee of an amount equal to the aggregate unpaid principal amount of all Notes held by such holder, together with the interest unpaid thereon and accrued to the date of payment, plus all other amounts

then due or payable to such holder under this Indenture, said Notes, the Participation Agreement, the Lease or the Guaranty, forthwith sell, assign, transfer and convey to or at the written direction of the Owner (without recourse or warranty of any kind) all the right, title and interest of such holder in, to and under this Indenture, said Notes, the Participation Agreement, the Lease and the Guaranty, and the Owner shall assume any and all obligations of such holder under this Indenture. If the Owner shall so request, such holder will comply with all the provisions of Section 4.01 hereof to cause new Notes to be issued to or at the written direction of the Owner in such authorized denominations as the Owner shall request. Any charges, expenses and taxes incurred or required to be paid in connection with the issuance of any such new Notes shall be borne and payable by the Owner.

(c) *Right to Make Advances.* Subject to the limit set forth in the next succeeding sentence, if an event shall occur or a condition shall exist which, after notice or the passage of time or both, could constitute a Lease Default (other than a Basic Rent Default), and if the effect of such event or the existence of such condition can be remedied by making advances to, or on behalf of, the Lessee that would constitute Supplemental Rent, the Owner Trustee and/or the Owner shall have the right, but shall not be obligated, to make advances to, or on behalf of, the Lessee in connection with the cure of such default. The right of the Owner Trustee and the Owner to make advances pursuant to the next preceding sentence shall not be available to the extent that the sum of the advances theretofore made to, or on behalf of, the Lessee pursuant to this provision shall exceed \$500,000.

### ARTICLE XIII

#### Amendments of and Supplements to This Indenture and other Documents

Section 13.01. *Amendments and Supplements with Consent; Limitations.* With the prior written consent of a Majority in Interest of Noteholders, (a) the Owner Trustee and the Loan Trustee may at any time and from time to time enter into a Supplemental Indenture for the purpose of adding provisions to, or changing or eliminating provisions of, this Indenture, and (b) the Owner Trustee may at any time and from time to time enter into such written amendment of or supplement to the Lease, the Guaranty, any Purchase Order, any Purchase Order Assignment, any Bill of Sale or the Trust Agreement as may be acceptable to the other party or parties thereto, or the Owner Trustee and the Loan Trustee may execute and deliver any written waiver or consent to the modification of the terms of any such agreements or instruments, it being understood and agreed that no consent of the Owner Trustee shall be required in connection with any amendment of or supplement to the Guaranty (other than any amendment of or supplement to Section 2 or Section 3 or § § 5.2(d), 5.7(b), 5.8, 5.12 or 5.17 thereof); *provided, however*, that no such consent shall be necessary to empower or permit the parties to this Indenture, and the other agreements and instruments referred to in Section 13.02 hereof, to execute the agreements and instruments and take the actions referred to therein for any of the purposes specified in Section 13.02 hereof; and *provided, further*, that, without the prior written consent of each holder of any

Note then outstanding to be affected by such Supplemental Indenture, amendment, supplement, waiver or modification, no such instrument or act shall (a) modify any of the provisions of this Section 13.01 or of Section 9.03, 12.01, 12.02, 12.03 or 12.10 hereof, or the definitions of the terms "Investment Securities", "Majority in Interest of Noteholders", "outstanding" (with respect to Notes) or "Event of Default" under this Indenture or under the Lease (except to add additional events of default), (b) reduce the amount or extend the time of payment of any amount owing or payable under any Note, whether as to principal or interest, or alter or modify the provisions of Article V or Section 12.06 hereof with respect to the order of priorities in which distributions hereunder shall be made as between the holders of Notes, on one hand, and the Loan Trustee and the Owner Trustee, on the other, (c) reduce, amend or modify any indemnities (except to add additional indemnities) in favor of the holders of Notes, or increase, amend or modify any indemnities (except to reduce or limit then existing indemnities) in favor of the Owner under the Participation Agreement or the Lease, (d) reduce the amount or extend the time of payment of any Lease Rent, (e) adversely affect the Trust Indenture Estate or the lien of this Indenture thereon, (f) reduce any percentage in aggregate principal amount of Notes outstanding specified herein the holders of which are empowered under the provisions hereof to take any action hereunder or to permit or compel the Owner Trustee or the Loan Trustee to take, suffer or omit any action or (g) amend, supplement or modify the Lease or consent to any assignment of the Lease, in either case releasing the Lessee from its obligations in respect of the payment of Lease Rent or changing the absolute and unconditional character of such obligations as set forth therein; and *provided, further*, that the Owner Trustee shall not amend, supplement, modify or waive any terms of the Trust Agreement except to the extent permitted by, and in accordance with, the terms thereof, and unless a signed copy of such amendment, supplement, modification or waiver shall have been delivered to the Loan Trustee; and *provided, further*, that, without the prior written consent of each holder of a Note then outstanding, (i) no such Supplemental Indenture or waiver or modification of the terms hereof shall permit the creation of any Lien on the Trust Indenture Estate or any portion thereof, or deprive the holder of any Note then outstanding of the lien of this Indenture on the Trust Indenture Estate, and (ii) no amendment or modification of, supplement to or waiver in respect of the Trust Agreement shall alter or modify any of the provisions of Section 12 thereof. Any Supplemental Indenture or other agreement, instrument or action made, entered into or taken in a manner inconsistent with or contrary to the provisions of this Article XIII shall be void and of no effect.

**Section 13.02. *Amendments, Supplements and Consents not Requiring Consent of Holders of Notes.*** No written consent under Section 13.01 hereof shall be required to empower the Loan Trustee at any time or from time to time to enter into any Supplemental Indenture with the Owner Trustee or to permit the Owner Trustee to enter into any amendment of, supplement to or waiver or modification in respect of the Lease, the Guaranty, any Purchase Order, any Purchase Order Assignment, any Bill of Sale or the Trust Agreement, for any one or more of the following purposes:

(a) to add to the covenants and agreements of the Owner Trustee contained in this Indenture other covenants or agreements of or conditions or restrictions upon the

Owner Trustee, or to surrender or eliminate any right, power or privilege granted to or conferred upon the Owner Trustee in this Indenture;

(b) to cure any minor ambiguity, or formal defect or omission, contained herein or in any of the other said agreements or instruments (*provided*, that the interests of the holders of the Notes shall not be adversely affected thereby);

(c) to correct or amplify the description of the Leased Property or any other portion of the Trust Indenture Estate (*provided*, that the interests of the holders of the Notes shall not be adversely affected thereby), or to reflect any release of any property from the Trust Indenture Estate pursuant to the express terms hereof;

(d) to qualify this Indenture under the Trust Indenture Act of 1939, as amended, or any similar Federal statute hereafter in effect, except that nothing in this subparagraph (d) shall permit or authorize the inclusion herein of the provisions referred to in Section 316(a)(2) of said Act or any corresponding provisions of any such similar Federal statute;

(e) to Grant to the Loan Trustee additional property, rights, powers or privileges, in trust, for the purposes of this Indenture;

(f) to amend or supplement the Trust Agreement (*provided*, that no such amendment or supplement shall be entered into for the purpose, or with the effect, of dissolving or terminating the trusts created thereby, or distributing any of the assets that comprise the Trust Estate; and *provided, further*, that the interests of the holders of the Notes shall not be adversely affected thereby); or

(g) to amend or supplement the Lease solely for the purpose of (i) changing any of the terms and conditions thereof with respect to the Lessee's right of first refusal and renewal rights in respect of the Units at the end of the original term of the Lease or (ii) increasing Basic Rent or Stipulated Loss Value payable in respect of the Units (*provided*, that the interests of the holders of the Notes shall not be adversely affected thereby).

Section 13.03. *Consent to Substance not Form.* It shall not be necessary for any written consent of the holders of outstanding Notes, or of the Owner, given pursuant to Section 13.01 hereof to specify the particular form of the proposed documents to be executed and delivered pursuant to said Section 13.01, but it shall be sufficient if such consent is given to the substance thereof.

Section 13.04. *Documents Mailed to Holders.* Promptly after the execution and delivery by the Owner Trustee or the Loan Trustee of any agreement or instrument entered into pursuant to Section 13.01 or 13.02 hereof, the Loan Trustee shall mail, by certified mail, postage prepaid, a photocopy or conformed copy thereof to each holder of a Note then outstanding at its address shown in the Note Register.

Section 13.05. *Arbitration.* The Owner Trustee will not, without the prior written consent of the Loan Trustee, submit to arbitration any question, dispute or other matter arising under the Lease, the Guaranty, any Purchase Order, any Purchase Order Assignment, any Bill of Sale or the Trust Agreement.

## ARTICLE XIV

### Miscellaneous

Section 14.01. *No Legal Title to Trust Indenture Estate in Holders.* No holder of any Note shall, by reason thereof or hereof, have legal title to any part of the Trust Indenture Estate. No transfer, by operation of law or otherwise, of any Note, or other right, title and interest of any holder of a Note, in and to the Trust Indenture Estate or hereunder, shall operate to terminate this Indenture or the trusts hereunder or entitle any successor or transferee of such holder to the transfer to it of legal title to any part of the Trust Indenture Estate.

Section 14.02. *Limitation on Rights of Others.* Nothing in this Indenture, whether express or implied, shall be construed to give to any person other than the Owner Trustee, the Loan Trustee and the holders of Notes any legal or equitable right, power, privilege, immunity, claim or remedy under or in respect of this Indenture or any covenant, condition or provision contained herein. All such covenants, conditions and provisions are, and shall be held to be, for the sole and exclusive benefit of the Owner Trustee, the Loan Trustee and such holders.

Section 14.03. *Execution of Instruments by Holders of Notes; Binding Effect.* Any request or other instrument which this Indenture may require or permit to be signed by the holder of any Note shall be sufficiently executed if signed by such holder or by an attorney-in-fact of such holder duly appointed in writing by such holder, and, subject to the provisions of the next paragraph, the action taken by execution and delivery of such request or other instrument shall become effective when such request or other instrument shall have been delivered to the Loan Trustee. The fact and date of execution of any such request or other instrument, or of any writing appointing such attorney-in-fact, may be proved by the affidavit or signed statement of a witness of such execution, or by the certificate of a notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the person signing such request, other instrument or writing acknowledged to him the execution thereof. Where such execution is by or on behalf of any legal entity other than an individual, such affidavit, signed statement or certificate shall also constitute proof of the authority of the person signing on behalf of such legal entity. The fact and date of the execution of any such request, other instrument or writing, or the authority of the person signing the same, may also be proved in any other manner which the Loan Trustee shall deem to be sufficient. The ownership of Notes shall be proved by the Note Register.

At any time prior to (but not after) the evidencing to the Loan Trustee, as provided in the preceding paragraph, of the taking of any action by the holders of a majority or other percentage in aggregate principal amount of Notes outstanding specified by this Indenture, any holder of a Note which is shown by the evidence to be included in the Notes the holders of which have taken such action may, by filing a written notice with the Loan Trustee at its Principal Corporate Trust Office and upon proof of holding revoke such action so far as concerns such Note. Except as aforesaid, the execution and delivery of any request or other instrument or the taking of any other action hereunder by the holder of any Note shall bind

the holder of any Note issued in exchange or replacement therefor, or (in the case of any Registered Note) issued on registration of transfer thereof, in respect of any action taken, suffered or omitted by the Loan Trustee or the Owner Trustee in accordance with such request, other instrument or action, whether or not notation thereof shall have been made on such Note.

Section 14.04. *Payments Due on Days not Business Days.* In any case where the date for payment or prepayment of principal of, or for payment of the interest on, any Note shall not be a Business day, then payment of said principal or interest, as the case may be, shall be made on the next succeeding day that is a Business day.

Section 14.05. *Notices; Payments.* (a) Unless otherwise expressly specified or permitted by the terms hereof, notices and other communications required or permitted to be given or made under the terms hereof shall be in writing. Any such communication or notice shall be deemed to have been duly made or given (a) (i) when delivered personally, (ii) when made or given by telex, prepaid at straight rates, or (iii) in the case of mail delivery, two Business days after any such communication or notice shall have been deposited in the United States mail for transmission by first class mail, postage prepaid; and if (b) addressed to the intended recipient as follows (subject to the next sentence of this Subsection (a)):

<u>Name of Person</u>	<u>Address</u>
The Owner Trustee .....	45 Wall Street New York, New York 10005 Attention: Corporate Trust and Agency Division
Each holder of a Note .....	The address contained in the Note Register maintained as required by this Indenture
The Loan Trustee .....	P.O. Box 318 Church Street Station New York, New York 10015 Attention: Account Officer, Corporate Trust Division
The Lessee .....	c/o X-L-Co., Inc. 60 State Street Boston, Massachusetts 02109 Attention: President
The Owner .....	260 Long Ridge Road Stamford, Connecticut 06902 Attention: Manager of Operations - Leasing and Industrial Loans

Each such person may from time to time designate by notice in writing to the other such persons a different address for communications and notices.

In any case where notice to holders of Notes is required to be given hereunder, neither the failure to give such notice, nor any defect in any notice so given, to any particular holder of Notes shall affect the sufficiency of such notice with respect to the other holders of Notes.

Where this Indenture provides for notice in any manner, such notice may be waived in writing by the person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by holders of Notes shall be filed with the Loan Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

(b) Unless otherwise expressly specified or permitted by the terms hereof, all payments provided for herein shall be made, if to the Loan Trustee, to it at P.O. Box 318, Church Street Station, New York, New York 10015, Attention: Account Officer, Corporate Trust Division, or at such other address and/or to the attention of such other department as the Loan Trustee shall from time to time designate by notice in writing to the Owner Trustee, the Lessee and the Owner.

Section 14.06. *Severability.* Any provision of this Indenture which is invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without invalidating, prohibiting the observance of or rendering unenforceable the remaining provisions hereof, and any such invalidity, illegality or unenforceability in any jurisdiction shall not invalidate, prohibit the observance of or render unenforceable such provision in any other jurisdiction.

Section 14.07. *Dating of Indenture.* Although this instrument is dated for convenience as of February 2, 1981, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the Acknowledgments hereto annexed.

Section 14.08. *Successors and Assigns.* All covenants and agreements contained herein shall be binding upon the Owner Trustee and the Loan Trustee, and their respective successors and assigns, and each holder of a Note, and shall inure to the benefit of the Owner Trustee and the Loan Trustee, and their respective successors and assigns permitted hereunder, and each holder of a Note.

Section 14.09. *Table of Contents and Headings.* The Table of Contents to this Indenture and the headings of the various Articles, Sections, Subsections and other subdivisions hereof have been inserted for convenience of reference only and shall not be construed to affect the meaning of any of the provisions hereof.


Section 14.10. *Governing Law.* This Indenture shall be governed by, and construed in accordance with, the law of the State of New York with respect to all matters, including matters of construction, interpretation, validity and performance.



IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed under their respective corporate seals by their respective officers thereunto duly authorized.

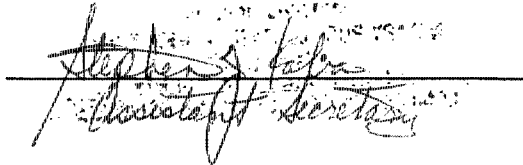
UNITED STATES TRUST COMPANY  
OF NEW YORK, As Owner  
Trustee, and, to the extent  
so specified herein, in its  
Individual Corporate Capacity

By

  
As & Vice Pres.

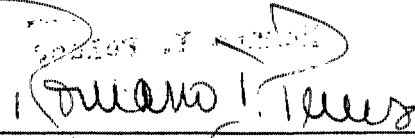
[Corporate Seal]

Attest:

  
Assistant Secretary

BANKERS TRUST COMPANY,  
As Loan Trustee

By



Vice President

[Corporate Seal]

Attest:

  
Assistant Secretary

STATE OF NEW YORK

COUNTY OF NEW YORK

ss.:

On the 3<sup>rd</sup> day of February, 1981, before me personally came Thomas B. Zakrzewski, to me known, who, being by me duly sworn, did depose and say that he resides at 831 56<sup>th</sup> Street, Brooklyn, New York; that he is Vice President of UNITED STATES TRUST COMPANY OF NEW YORK, one of the corporations described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

[Notarial Seal]

Victoria Beddoe  
Notary Public

VICTORIA BEDDOE  
NOTARY PUBLIC, STATE OF NEW YORK  
#24-4710477  
QUALIFIED IN KINGS COUNTY  
COMMISSION EXPIRES MARCH 30, 1982

STATE OF NEW YORK

COUNTY OF NEW YORK

ss.:

On the 2<sup>nd</sup> day of February, 1981, before me personally came Romano I. Peluso, to me known, who, being by me duly sworn, did depose and say that he resides at 38 EAST 85th STREET, NEW YORK, NEW YORK 10028; that he is Vice President of BANKERS TRUST COMPANY, one of the corporations described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

[Notarial Seal]

SUSAN J. GRIMM  
Notary Public, State of New York  
No. 41-4713456  
Qualified in Queens County  
Commission Expires March 30, 1982

Susan J. Grimm  
Notary Public

**FORM OF NOTE  
AND  
LOAN TRUSTEE'S CERTIFICATION OF  
AUTHENTICATION**

**[FORM OF NOTE]**

UNITED STATES TRUST COMPANY OF NEW YORK, AS TRUSTEE UNDER  
AMENDED TRUST AGREEMENT DATED AS OF JUNE 15, 1980, AS AMENDED,  
SUPPLEMENTED AND RESTATED AS OF FEBRUARY 2, 1981

15¾% Secured Note (Non-Recourse) due February 5, 1996

[R-            ]\*

Dated:

New York, New York

UNITED STATES TRUST COMPANY OF NEW YORK, not in its individual capacity but solely as Trustee (herein, together with its successors and assigns in its capacity as a trustee, called the "Owner Trustee") under the Amended Trust Agreement, dated as of June 15, 1980, as amended, supplemented and restated as of February 2, 1981, with General Electric Credit Corporation (the "Owner"), for value received, hereby promises to pay to or [registered assigns]\*\* on February 5, 1996 the principal sum of (\$            ), together with interest on the amount of said principal sum remaining unpaid from time to time from the date of this Note until paid in full at the rate of 15¾% per annum, and on any overdue principal (including any overdue prepayment of principal) and, to the extent that payment of such interest is enforceable under applicable law, on any overdue instalment of interest, at the rate of 16¾% per annum (interest in each case being computed on the basis of a 360-day year of twelve 30-day months), in each case as provided herein and in the Indenture of Trust, Security Agreement and Chattel Mortgage, dated as of February 2, 1981 (herein, together with all indentures supplemental thereto called the "Indenture"; the terms used and not otherwise defined herein but defined, either directly or by cross-reference, in the Indenture being used herein with the meanings assigned thereto in the Indenture), between the Owner Trustee and BANKERS TRUST COMPANY (herein, together with its successors and assigns in its capacity as a trustee, called the "Loan Trustee").

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\* Bracketed material to be replaced by designation "O-" in each Order Note.

\*\* Bracketed material to be replaced by the word "order" in each Order Note.

Such principal and interest shall be payable in the following manner: Interest only shall be payable on May 5, 1981 (if this Note shall have been issued prior to May 5, 1981). Thereafter, principal and interest shall be payable in fifty-nine quarter-annual instalment payments, to be payable on each February 5, May 5, August 5 and November 5 (each such date being herein called a "Payment Date"), each such instalment payment to be in the amount determined by multiplying the principal amount of this Note by the number (herein called the "Payment Factor") set forth in Schedule I annexed hereto opposite the appropriate Payment Date, the first such payment to be made on August 5, 1981, and subsequent payments to be made on each Payment Date thereafter, to and including February 5, 1996, except that the last such instalment payment shall, in any event, be in an amount sufficient to discharge the accrued interest on and unpaid principal amount of this Note.

This Note is one of an authorized issue of 15¾% Secured Notes (Non-Recourse) due February 5, 1996 of the Owner Trustee ("Notes"), limited in aggregate principal amount to \$30,000,000. The Notes are issued under and secured by the Indenture (the security for the Notes under the Indenture being herein called the "Trust Indenture Estate"). The Trust Indenture Estate is and will be held by the Loan Trustee, in the manner set forth in the Indenture, as security for the Notes. Reference is hereby made to the Indenture for a statement of the rights and powers of the holders of, and the nature and extent of the security for, the Notes, as well as for a statement of the terms and conditions of the trusts created by the Indenture, to all of which terms and conditions the holder hereof agrees by its acceptance of this Note.

All payments of principal and interest to be made hereunder and under the Indenture to the holder of this Note and the holders of other Notes outstanding thereunder shall be made only from the income and proceeds of the Trust Indenture Estate and only to the extent that the Loan Trustee shall have sufficient income or proceeds from the Trust Indenture Estate to make such payments in accordance with the terms of the Indenture; and the holder hereof, by its acceptance of this Note, agrees that it will look for payment of this Note solely to the income and proceeds of the Trust Indenture Estate to the extent available for distribution to such holder as provided in the Indenture, and that neither the Owner Trustee, the Owner nor the Loan Trustee will be liable in its individual capacity to the holder of this Note for any amounts payable hereunder or, except as provided therein, otherwise liable under the Indenture.

Principal and interest shall be payable at the Principal Corporate Trust Office of the Loan Trustee in immediately available funds in such coin or currency of the United States of America as shall at the time be legal tender for the payment of public and private debts; *provided, however*, that this Note is subject to the provisions of Section 3.02(a) of the Indenture providing for payment by credit of account, check or other means in certain instances, and any payment made by the Owner Trustee or the Loan Trustee of principal or interest hereunder pursuant to said provisions shall be sufficient to discharge, to the extent of such payment, the liability of the Owner Trustee in respect of this Note.

The holder hereof, by its acceptance of this Note, agrees that each payment received by it hereunder shall be applied as follows: *first*, to the payment of accrued but unpaid interest on this Note then due hereunder; and *second*, to the payment of the principal amount of this Note then due hereunder.

In addition to the periodic prepayment of principal of this Note referred to in the second paragraph of this Note, the principal of this Note is, under certain circumstances set forth in the Indenture, subject to prepayment in whole or in part in the manner set forth in Article VI of the Indenture at a price equal to 100% of the principal amount hereof to be prepaid plus accrued and unpaid interest thereon to the date fixed for prepayment, without premium.

Upon the occurrence of an Event of Default under and as specified in the Indenture, the principal hereof and the interest accrued and unpaid hereon may be declared to be due and payable, which declaration may thereafter be rescinded under certain circumstances, in each case as specified in the Indenture.

The Notes are issuable in the form of Registered Notes and Order Notes only. The Owner Trustee and the Loan Trustee may deem and treat the person in whose name any Registered Note is registered in, and the payee or endorsee of any Order Note whose name and address appear in the record of Order Notes contained in, the Note Register, required to be maintained at the Principal Corporate Trust Office of the Loan Trustee, as the absolute owner of such Note (whether or not such Note shall be overdue) for the purpose of receiving payment and for all other purposes. Upon and subject to the terms and conditions of the Indenture, (a) transfer of any Registered Note may be registered in the Note Register referred to above by the registered holder thereof in person or by its duly authorized attorney, (b) any Note may be exchanged for one or more Notes of other authorized denominations and (c) Registered Notes may be exchanged for Order Notes, and Order Notes for Registered Notes. Order Notes are transferable by endorsement and delivery, subject to the provisions of the Indenture.

This Note shall be governed by the laws of the State of New York.

This Note shall not be valid unless and until the certification of authentication hereon shall have been signed by the Loan Trustee.

IN WITNESS WHEREOF, the Owner Trustee has caused this Note to be duly executed.

UNITED STATES TRUST COMPANY OF  
NEW YORK, not in its individual capacity  
but solely as trustee

By \_\_\_\_\_  
Assistant Vice President

**[FORM OF LOAN TRUSTEE'S CERTIFICATION OF AUTHENTICATION]**

This Note is one of the 15¾% Secured Notes (Non-Recourse) due February 5, 1996,  
described in the within-mentioned Indenture.

**BANKERS TRUST COMPANY, as  
Loan Trustee**

By \_\_\_\_\_  
Authorized Officer

## **SCHEDULE I**

**of**

### **15¾% SECURED NOTE (NON-RECOURSE) DUE FEBRUARY 5, 1996**

The amount of each quarter-annual instalment payment of principal and interest to be made, commencing August 5, 1981, with respect to this 15¾% Secured Note (Non-Recourse) due February 5, 1996 of United States Trust Company of New York is to be determined by multiplying the principal amount shown on the face of this Note by the Payment Factor hereinafter set forth opposite the appropriate Payment Date number; *provided, however*, that if at any time a portion, but less than all, of the unpaid principal amount of this Note is prepaid pursuant to Article VI of the Indenture, the amount of each such quarter-annual instalment payment payable thereafter shall be reduced by an amount equal to (i) the amount of such quarter-annual instalment payment which would have been payable had no prepayment been made, multiplied by (ii) a fraction, of which the numerator is the principal amount of this Note so prepaid and the denominator is the unpaid principal amount of this Note immediately prior to such prepayment.

	<u>Payment</u> <u>Date No.</u>	<u>Payment</u> <u>Factor</u>		<u>Payment</u> <u>Date No.</u>	<u>Payment</u> <u>Factor</u>
1.	.....	.04386854	31.	.....	.04536600
2.	.....	.04386854	32.	.....	.04536600
3.	.....	.04386854	33.	.....	.04536600
4.	.....	.04386854	34.	.....	.04536600
5.	.....	.04386854	35.	.....	.04171500
6.	.....	.04386854	36.	.....	.04171500
7.	.....	.04386854	37.	.....	.04171500
8.	.....	.04386854	38.	.....	.04171500
9.	.....	.04386854	39.	.....	.03789600
10.	.....	.04386854	40.	.....	.03789600
11.	.....	.04467900	41.	.....	.03789600
12.	.....	.04467900	42.	.....	.03789600
13.	.....	.04467900	43.	.....	.03452600
14.	.....	.04467900	44.	.....	.03452600
15.	.....	.04644100	45.	.....	.03452600
16.	.....	.04644100	46.	.....	.03452600
17.	.....	.04644100	47.	.....	.03138600
18.	.....	.04644100	48.	.....	.03138600
19.	.....	.04644100	49.	.....	.03138600
20.	.....	.04644100	50.	.....	.03138600
21.	.....	.04644100	51.	.....	.04075000
22.	.....	.04644100	52.	.....	.04075000
23.	.....	.04657500	53.	.....	.04075000
24.	.....	.04657500	54.	.....	.04075000
25.	.....	.04657500	55.	.....	.04657800
26.	.....	.04657500	56.	.....	.04657800
27.	.....	.04657900	57.	.....	.04657800
28.	.....	.04657900	58.	.....	.04657800
29.	.....	.04657900	59.	.....	.04657212
30.	.....	.04657900			



**DESCRIPTION OF UNITS**

**100-Ton 4,750 and 4,700 Cubic Foot Capacity Covered Hoppers:**

**(1) Manufacturer: Portec, Inc.**

**Number of Cars: 406**

**Identifying Marks: XTRX 76577-XTRX 76592, inclusive;  
MILW 101700-MILW 101799, inclusive (which covered hopper cars  
bearing identification marks MILW 101700-MILW 101799, inclusive,  
formerly bore identification marks XTRX 76593-XTRX 76692, inclusive);  
XTRX 76693-XTRX 76757 inclusive; XTRX 76759-XTRX 76927, inclusive;  
XTRX 76928-XTRX 76982, inclusive; and WVRC 9200 (which covered  
hopper car bearing identification mark WVRC 9200 formerly bore  
identification mark XTRX 76758).**

**(2) Manufacturer: Richmond Tank Car Company**

**Number of Cars: 520**

**Identifying Marks: XTRX 75958-XTRX 76082, inclusive;  
XTRX 76188-XTRX 76347, inclusive; MILW 101800-MILW  
101899, inclusive; and XTRX 76348-XTRX 76482,  
inclusive.**

**(3) Manufacturer: FMC Corporation, Marine and Rail Equipment Division**

**Number of Cars: 90**

**Identifying Marks: XTRX 76983-XTRX 76999, inclusive; and  
XTRX 77010-XTRX 77082, inclusive.**

**DESCRIPTION OF PURCHASE ORDERS**

Purchase Agreement: XTRA Inc. Equipment Purchase Order E-2064, dated November 3, 1979, accepted November 3, 1979 by Railcar Division of Portec, Inc.

Purchase Agreement: Letter Order of Itel Corporation, dated November 30, 1978, accepted December 11, 1978 by Richmond Tank Car Company, as amended, and as assigned to XTRA, Inc. pursuant to an Assignment, Assumption of Liabilities and Release Agreement, dated as of October 25, 1979, among Itel Corporation, XTRA, Inc. and Richmond Tank Car Company.

Purchase Agreement: XTRA Inc. Purchase Order E-2098, dated June 5, 1980, accepted July 11, 1980, by Marine and Rail Equipment Division of FMC Corporation.